

**CONTINENTAL SHELF ISSUES  
IN  
THE YELLOW SEA AND THE EAST CHINA SEA**

**by  
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## I. The Topography

The Yellow Sea and the East China Sea are surrounded by the territories of China, Japan, Korea and Taiwan, and are fairly equal in size, each being approximately 480,000 square kilometers (sq. km.).<sup>(1)</sup> They are contiguous to each other and together assume the shape of a semi-enclosed sea. For the purposes of the present paper, the geophysical structure of these two Seas may be briefly described as following.

The Yellow Sea is enclosed by Korea on the east and by China on the west and north, fronting the Pohai Bay on its northwest, and is adjacent to the East China Sea on the south. (map no. 1) It is a shallow region with depths that average 55 meters and nowhere exceed 125 meters. This Sea takes its name (Hwang Hai) from what the Yellow River (Hwang Ho) of China has deposited in it: masses of clayey soil (loess) derived from the northwest regions of China and carried down southward by the current. According to an estimate, the Yellow River washes down into this Sea 15,000 million cubic yards of sediment every year.<sup>(2)</sup> Another source says that, at one time, the entire Shantung Peninsula which protrudes deep into the Sea was an island, but was bridged by the sediment thus brought down.<sup>(3)</sup> To a much lesser extent, the Yangtze River which flows into the East China Sea further south also contributes to its yellowish appearance. The eastern (Korean) half of the Sea is, on the other hand, much less yellow. (map no. 2)

A similar degree of contrast exists in the topography of the sea-bed. The influence of the two Chinese rivers extends far beyond the shoreline on the west, so that a smooth gentle slope (1:26,000) from the west meets the steep and less regular slope (1:6,000) from the east in an axial valley two-thirds across on the eastern side of the Yellow Sea. The subsoil of the sea-bed shows a similar distribution of sediments, the eastern third being floored by sands derived from the mountains of Korea, the rest on the west side from the clay brought down by the two rivers of China. (maps no. 2, 3)

The East China Sea is loosely enclosed by China on the west and by Japan and the Ruykyu Islands on the east and south respectively, and fronts Korea and the Yellow Sea on the North. (map no. 1) The water gets gradually deeper in the southeast until the bottom meets the 120-meter contour line near the Okinawa Trough, which forms the southeast margin of this Sea. In the north-east the Trough ends in a wedge-shape formation at a point between the Korean Cheju Island and the Japanese Kyushu. Yellowish traces of surface water are also found in the East China Sea, but only along the Chinese coastal areas on the west.

The sea-bed topography is also fairly similar to that of the western part of the Yellow Sea, but the southeastward extension of the smooth gentle slope abruptly ends at the Okinawa Trough. In the absence of a land mass on the east to project a westward slope as in the Yellow Sea, the contrast here is not between east and west but between the inner and outer halves of the sea-bed. Otherwise, the distribution of sediments is also similar to that of the Yellow Sea: that is, silt and clay on the inner half and sands on the outer half.



The Okinawa Trough and areas adjacent to it should also be given a brief description here because of their significance for the present discussion. The Trough represents one of the three distinct features of what is sometimes called the Trough, Ridge and Trench Province, all of them - with a combined area of about 410,000 sq. kms. - extending in a seaward-curving arc from the west end of Japan to Taiwan. (map no. 4) The continental shelf of the East China Sea therefore ends at the continental slope that slides down abruptly into the bottom of the Trough, reaching a depth of 2,270 meters at its deepest near Taiwan. Seaward of the Trough lies the Ryukyu Ridge, which is an elongate arc along the top of which rises a chain of islands including Okinawa. Beyond the Ridge on the Pacific side is the Ryukyu Trench, one of the deepest parts of the ocean; its axis between Japan and Taiwan is mostly deeper than 6,000 meters with a sounding of 7,881 meters recorded near the middle point.

## II. The Prospect of Oil

There is little evidence that the submarine areas of the Yellow Sea and the East China Sea had been explored by oceanographers prior to the 1960's for the specific purpose of prospecting oil. Ironically enough, there seems to have been an erroneous assumption, based on grossly insufficient geological information, that oil was one of the least likely kinds of resources to be present in the sea in this part of the world.<sup>(4)</sup> During the mid-1960's, however, the occasional reports of surveys conducted by marine geologists began to arouse some wishful thinking that there might be oil in these least explored areas of the sea. Affected by the growing interest in the development of ocean resources, the coastal states of the region began to consider the need to combine their efforts in order to discover the potential of their offshore areas as a source of oil.

Thus it was in 1966 that the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP) was formed under the auspices of the United Nations Economic Commission for Asia and the Far East (ECAFE). The membership has expanded from the original four (Japan, Korea, the Philippines, and Taiwan) to the present nine, including Cambodia, Indonesia, Malaysia, Vietnam and Thailand. An advisory group was also formed of specialists from Britain, France, Germany and the United States to support the activities of the Committee. One of the basic ideas of this joint endeavor was of course to avoid such political, economic and technological difficulties as were rightly foreseen to arise from an unconcerted attempt by individual states to determine oil prospects in their offshore areas, particularly in the areas of the Yellow Sea and the East China Sea which are both enclosed by states which had never had major domestic supplies of that fuel.

Under the sponsorship of this Committee, a comprehensive geophysical survey was conducted over vast areas of the Yellow Sea and the East China Sea during October and November of 1968. Scientists from Japan, Korea, Taiwan and the United States took part in this joint investigation carried on with a research vessel offered by the Pacific Support Group of the United States Naval Oceanographic Office, which incidentally has an uncommonly deep interest in the Far Eastern seas. It was from the findings of this six-week joint survey, based on previous studies conducted separately by some members of the team, that the coastal states were reasonably assured of the future potential of oil from some part of their offshore areas. In light of the developments since then, the conclusion of the survey deserves to be quoted at length.

"In these areas sediments were deposited rapidly owing to the large area of China that is drained by the Yellow and Yangtze rivers. High contents of nutrients in the river effluents also lead to high organic productivity in the seas of the region. Surface samples from the sea floor contain as much as 1-1/2 per cent organic matter, but higher contents are to be expected at greater depths of burial that were not affected by glacially lowered levels."

"The most favorable part of the region for oil and gas is the 200,000 sq. kms. area mostly northeast of Taiwan. Sediment thicknesses exceed 2 kms., and on Taiwan they reach 9 kms., including 5 kms. of Neogene sediment. A high probability exists that the continental shelf between Taiwan and Japan may be one of the most prolific oil reservoirs in the world. It is also one of the few large continental shelves of the world that has remained untested by the drill, owing to military and political factors, as well as a lack of even reconnaissance geological information such as provided by this short survey." (map no. 1)

"A second favorable area for oil and gas is beneath the Yellow Sea where three broad basins are present. These basins are inter-connected, but the center of one is near Korea and the centers of the other two are near the mainland of China. The basins contain a thickness of nearly 1-1/2 km. of sediment, according to this survey, and the sediments probably have a higher content of organic matter than do the sediments beneath the open continental shelf. The good reflecting horizons within the bottom probably are sandy layers that can serve as reservoir beds between organic-rich source beds." (emphasis added) (5) (map no. 1)

To the oil-hungry coastal states of the region, this could not fail to be big news. The report was widely publicized, and some of its conclusions were wildly exaggerated in the general excitement and ignorance. For many, the only step to be taken now was just to pump the "black gold" out of the sea and stop worrying about the mounting cost of imported oil. Each of them - with the exception of China - (6) was therefore strongly motivated to make ambitious advances into the sea, at least on the charts. The fact that none of them had the economic and technological means for the exploitation of this particular resource from the sea was often totally disregarded. To accomplish the purpose the first step taken was to extend coastal jurisdiction over what each claimant alleged to be its own continental shelf. Thus there took place among the four governments, including that of the Ryukyus, a race "to grab and to hold the lands under the high seas," (7) with the major oil interests of the West watching with a brightening gleam in their corporate eyes.

### III. The National Interest: the demand for oil and unilateral claims

When it was reported that some areas of the Yellow Sea and the East China Sea appeared to have a great oil potential, each of the coastal states immediately prepared to establish unilaterally a boundary limit vis-a-vis the state opposite. None of them proposed to seek a negotiated agreement on the problem of delimitation. The problem was, in fact, too new and too serious for any of them to agree even to discuss it, especially when the criteria of delimitation in international law were still uncertain, or at least seemed so to them. Spurred on by the pressing need for oil at home and exhilarated by the impressive prospect of contracts from abroad, each began to extend its maritime claims in such a way as to reach those areas where oil was thought most likely to be, insisting that the claim was in keeping with international law. What resulted was a considerable overlapping of unilateral and arbitrary claims by the coastal states to seabed areas in the Yellow and East China Seas. (map no. 5) To date nowhere else in the world are there found so many "straws in a glass."

#### A. Korea

##### (1) The Demand for Oil

In the Far East, Korea happens to be the only country that does not produce a single drop of oil. However, this has not prevented her from launching extremely ambitious plans in the 1960's to industrialize the traditionally agricultural economy. In the face of an insufficient supply of other domestic energy resources such as coal, it has been necessary for Korea to import oil in great quantity at very high cost. In order to meet the rapidly growing demand for oil by her expanding industries, Korea, in 1970 alone, spent approximately \$120 million on 7-1/2 million tons of oil from the Middle East. This amount is well over 10% of her total foreign currency earnings in the same year. Furthermore, the Korean demand for oil is increasing at a staggering rate, sometimes more than 35% a year, so that on the basis of current prices it will reach approximately \$600 million in 1979, according to a government estimate.<sup>(8)</sup> This means an increase of 400% in nine years.

Moreover, the present world market for oil is vulnerable to the collective bargaining strength of producer interests in the Organization of Petroleum Exporting Countries (OPEC). For example, when OPEC won the first phase of its oil war against the major oil interests of the West early in 1971<sup>(9)</sup>, the increased margin of oil price was passed on to consumers like Korea, so that its domestic consumer price rose by no less than 44-1/2% within the short span of three months.<sup>(10)</sup> The impact of such a drastic price increase on other industries can hardly be overlooked. So long as a small country is at the mercy of a seller's market, there is, however, little that can be done. The dominant influence of oil on the national economy of Korea, apart from other considerations, goes far to explain the excitement and promptness with which Korea responded to the reported sniff of oil in her offshore areas.

## (2) Unilateral Claims

As far as the development of continental shelf resources is concerned, things happened suddenly and progressed very quickly in Korea. As a matter of fact, she was little hampered by the lack of technology, for within two years no less than 10 foreign oil concerns expressed an interest in exploring the Korean continental shelves for oil. At the approach of Gulf Oil for sea-bed mining rights in August 1968, negotiations for an exploration and exploitation contract took place almost immediately. The concession contract signed with this company in April 1969, covering the sections that came to be designated as Blocks 2 and 4 (map no. 5), was the first of its kind to be entered into by Korea. Other firms followed suit in quick succession, so that between February and September of 1970 similar concession contracts were signed with three other foreign oil companies for the additional five blocks established in the Yellow Sea and the East China Sea. In other words, Korea has given concessions to 4 foreign oil companies for her 7 sea-bed mining blocks. (11)

Regulation of sea-bed mining by municipal law was entirely new to Korea. In the face of an immediate need, a new statute had to be drafted, because it was found inadequate to apply mutatis mutandis the existing law pertaining to the regulation of mining on land. Thus, a basic law, entitled the Submarine Mineral Resources Development Law (Code No. 2184), (12) was promulgated on January 1, 1970, eight months after the signing of the concession contract with Gulf Oil. Subsequently, on May 30, 1970 further provisions were made public in the form of a Presidential decree (No. 5020) in which the 7 sea-bed mining blocks were specified in latitude and longitude. The total area thus designated amounts to approximately 300,000 sq. kms. which is about 1-1/2 times the area of the whole peninsula. As Korea has not otherwise set up continental shelf boundaries in relation to other coastal states in the region, this part of the decree constitutes the sole statutory evidence of Korea's continental shelf claim in the areas designated.

In anticipation of its possible effect on their immediate interests, the government of Japan and Gulf Oil both watched the development of Korean legislation very closely. On April 1, 1969, Japan made it clear to Korea that she was concerned with the contents of the new law under preparation, particularly with the extent of the offshore areas to which it was going to be applied. (13) Even before the Korean provisions were made public, Japan was led to suspect they would, by their nature, adversely affect her national interests. Moreover, the 14-year controversy over fishing rights (1952-1965) had caused so much hard feeling that both countries now tended to exercise extreme caution in maritime affairs in order to avoid running into another "battle of mouths". The concern of Gulf Oil over this law during its formative period is said to have been more direct and forward. (14) This is understandable in light of the fact that the company had, even before its coming into force, already involved itself in what this particular law was intended to deal with.

The way in which Korea has employed the principles of international law in demarcating the seaward limits of her sea-bed mining blocks may be summarized as following. Blocks 1, 2 and 3 in the Yellow Sea and Block 4

at the northern edge of the East China Sea are delimited by virtue of the median line between Korea and China. Islands situated along the coasts of both states have in principle been given territorial status and used as base points in measuring the distance. The outer edge of Block 5 is on the landward side of Blocks 4, 6 and 7, and is therefore irrelevant to the international problem of delimiting the continental shelf boundary. Block 6 can hardly be said to have been demarcated on the basis of any particular principle of international law, but was simply filled in from an urge to avoid a vacuum arising by default, and has therefore some peculiarities. If a principle of international law had to be assigned to this block, it would in part be that of the median line. Block 7 extends as far down as  $28^{\circ} 36'$  of the northern latitude, over 250 miles from the nearest Korean territory, considerably beyond the 200-meter contour line into the Okinawa Trough. It respects a 12-mile territorial sea for the uninhabited Japanese islands of Danjo Gunto and Tori Shima, (map no. 6) on the seaward side of the Trough, although Japan claims only a three-mile territorial limit. It should be noted especially that Block 7, most irregular in shape, has been set up partly with resort to what has emerged as the theory of "natural prolongation of land territory", the offshoot of the 1969 North Sea Continental Shelf Cases decided by the International Court of Justice.

## B. Japan

## (1) The Demand for Oil

A remarkable story lies behind Japan's demand for oil and the problems that arise from her efforts to meet it. As a major industrial power, she cannot be said, by any standard, to have been richly blessed with natural resources of her own. In order to sustain the staggeringly high growth rate of her economy, therefore, she has been scraping almost literally every corner of the globe in search of natural resources. The number of countries from which she imports a variety of raw materials, led by oil and hard minerals, is now said to have reached 114 in all. Major items Japan is short of include timber and minerals such as bauxite, coal, copper, iron, nickel and oil, which altogether took up almost half of her total import of \$15 billion in 1969. According to a projection, the demand for these seven items, in terms of weight, will be 6.4 tons per capita in 1975 compared with 3.5 tons in 1969. By 1975 the world average is expected to show only a modest increase to 1.7 tons.<sup>(15)</sup> As a result of this heavy reliance on foreign resources, Japan is now the world's biggest importer of raw materials.

The economic statistics of Japan are usually fascinating in many ways, and the figures on oil are no exception. Since the amount of her domestic production of oil is negligible in proportion (1/2% in 1970 and is estimated to be 1/3% by 1975) and the estimated underground reserve is only 4 million tons approximately<sup>(16)</sup>, she has to meet her enormous demand for oil almost entirely through imports. Japan is therefore the world's biggest importer of oil. Moreover, the consumption of oil, which used to rise at the average rate of 18.8% per year between 1965 and 1970, is expected to rise at 13.1% per year between 1970 and 1975. Though this rate is lower than that of the preceding 5 years, the total demand for oil in 1975 will be approximately 300 million tons compared with 200 million tons in 1970. The figure estimated for 1985 is about 600 million tons, which amounts to the total annual output of oil throughout the entire Middle East at present.<sup>(17)</sup> To put it another way, to meet this volume of demand in 1985 there would have to be an unbroken chain of 200,000-ton tankers at intervals of 40 kilometers from the Persian Gulf to Tokyo Bay, or a tanker of the same size would have to cover a distance equal to 13-1/2 trips to the moon, in order to bring oil from 60 different countries to Japan.

Oil is basic to the economic growth of almost any country, but it is especially crucial to Japan for the simple reason that she has to meet about 70% (68.3% in 1969 and 73% in 1970)<sup>(18)</sup> of her energy requirements with it, unless a transfer in favor of atomic energy takes place some day. When demand is exorbitant, however, there arise besides the expenditure itself a number of other problems incidental to its import. Two of these problems may be pointed out here. The first is that of maintaining a constant availability of supply, and the second that of preserving the safety of transit. In other words, there has to be peace both at the tap and on the sea. For the past 25 years Japan has been relatively secure in both of these respects, but some recent developments that suggest a change of wind need to be noted closely.

First, with regard to the constant availability of supply, Japan as one of the major importers of oil from the Middle East was seriously disturbed in early 1971 to find herself most vulnerable to the capricious will of OPEC. As a matter of fact, this is rightly feared to be the beginning of a long-term shift from a buyer's to a seller's market where even the biggest customer would have cause for anxiety. The collective offensive by the 11 members of OPEC implied that supply might be suspended through no fault of Japan and other individual customers which rely on a middle man supplier rather than a producer. Suspension at the input end of the supply system would create reserve problems at the other end, especially in the case of Japan. Following a three-week transit from the Persian Gulf to Japan, the need for oil reserves presents a problem of stockpiling. Japan is said to keep a 45-day supply. Strategic considerations apart, this compares unfavorably with France's 95 days, Italy's 76 days and West Germany's 56 days, especially in the absence of an oil-rich neighbor to borrow from in time of great need. (19) Efforts are, therefore, being made to extend the reserve allowance up to 60 days. (20)

Second, with regard to the safety of transportation, Japan has been obsessed with the physical difficulty of passage through one of the worst navigational bottlenecks of the world, the Malacca Straits (21), which is situated between Indonesia, Malaysia and Singapore. This is rightly called "the Japanese oil road" or even "the life line". These nicknames are justified by the fact that 95% of Japan's total import of oil has to be shipped through this complex of straits en route from the Persian Gulf and other regions. Geographically, the Malacca Straits consists of many straits with varying widths ranging from 3.2 to 126 miles, including quite a few that are narrower than 24 miles. (map no. 7) The bottom is said to be covered with mud and sand, and is studded with rocks and banks. There are as many as 37 points which, being shallower than 23 meters, do not pass tankers over 200,000 tons, and the current runs at the speed of 3 knots. (map no. 8) A couple of large tankers sunk at critical points would block passage through the Straits and pollute the surrounding marine area including the port of Singapore. It is also surprising to note that "piratical acts, which in general are committed by armed members of the Indonesian navy in uniform, though not by order of their superiors, remain a phenomenon of daily life". (22) To make matters worse, the charts of the Straits are said to be inaccurate, having been made by the British and Dutch navies as long ago as the 1930's. These conditions alone are bad enough to keep a most experienced captain stiffly sober while steering his vessel through the Straits. In fact, over 80% of the Japanese captains are reported to have experienced difficulty here. (23)

On top of these geographical conditions, the political situation of the region does not allow excessive optimism. The three coastal states are not on the friendliest relations with one another, Indonesia and Malaysia in particular; nor are these two enthusiastic about the proposal to place the Straits under a form of international regulation for the safety of navigation. Japan was most disturbed by Malaysia's extension



of her territorial sea from 3 to 12 miles in July 1969, since there was no guarantee that the legal status of the two 12-mile belts from both sides (Indonesia also maintains 12 miles and Singapore three) would not affect navigation through the Straits in time of war or local tension. It was feared that a blockade could take place through no fault of a third party to whom innocent passage through the Straits is vitally important.

With regard to the safety of navigation in the Straits, it is of much interest to note a recent development in the region. On November 16, 1971, a six-point joint statement was issued simultaneously by Indonesia, Malaysia and Singapore, to the effect that the three states do not regard the Strait of Malacca and the Strait of Singapore as international straits and that the responsibility for the safety of navigation in the two straits rests with the coastal states concerned. This carefully guarded statement, which was an outcome of two earlier meetings held between Indonesia and Malaysia in Kuala Lumpur on October 14, 1971, and between Indonesia and Singapore in Singapore on October 18, 1971, cannot be regarded as an isolated action, but has to be viewed in the context of other related developments in the region as well as on the part of some non-coastal states. (24) On a broad basis, two factors - one regional and the other external - may be given as having occasioned this concerted move by the coastal states. First, the statement may be said to be in keeping with the desire of the regional block (Indonesia, Malaysia, the Philippines, Singapore, and Thailand) to be neutral and free of any interference from without. This move is believed to have arisen from the recent international political developments which are thought likely to affect the future of the states in the region. The five states have finally taken a formal stand by adopting a 13-point declaration in Kuala Lumpur on November 27, 1971. (25) Second, the three-state declaration of November 16, 1971, may be regarded as a form of resistance on the part of the coastal states against the idea of some non-coastal states to internationalize the Straits. For reasons given below, Japan may be said to be one of the ardent proponents of the move, and the involvement of the United States in this problem is apparently indirect, but would appear to the coastal states to be substantial in the sense that her proposal submitted to the United Nations Sea-Bed Committee in August, 1971, presents a definition of international straits with which the above declaration is in direct conflict. (26)

The international character of this seaway can be seen from the extent of its use by ships flying flags of so many states. A survey conducted by the government of Singapore in October, 1969, reveals that during that month alone as many as 4,012 ships passed through the Straits, of which 571 (14%) were Japanese. (27) Of the 171 ships over 30,000 tons, 75 (44%) were also Japanese. However, the breakdown by nationality is not so significant as the fact that over 80% of the 4,012 ships were with cargo bound for and from Japan. In spite of this, Japan's concern over the Straits had been relatively quiescent until she witnessed a series of disturbing events beginning in 1967. The first was the "Torrey Canyon" incident of March 10, 1967, when a Liberian tanker carrying 119,000 tons of crude oil from Kuwait ran aground on the Seven Stones

rocks 16 miles west of Land's End, England, and released 100,000 tons to the sea. The impact of this disaster on the shipping world was great, and the more so on Japan when the next month one of her own tankers, the 153,000-ton Tokyo Maru, had a hair-breadth escape from a similar fate right in the Malacca Straits. Motivated by the "Torrey Canyon" incident, the Inter-governmental Maritime Consultative Organization (IMCO) expressed in December, 1967, the need to conduct a survey of the Malacca Straits as a preliminary step for safety measures. Japan lost no time in offering cooperation to the three coastal states for this purpose. There was even formed a Malacca Straits Commission in her Ministry of Transportation in May, 1968, and the preliminary survey of the Straits was conducted in coordination with the coastal states from January to March, 1969.

The subsequent course of events has been more dramatic. Japan was concerned that a power vacuum in Southeast Asia might arise from the British plan to withdraw from East of Suez in 1971 and from the United States plan to "Asianize Asia" implied in the Nixon doctrine. The Japanese business community began, therefore, to discuss the need to defend the Malacca Straits with Japanese self-defense forces, thereby arousing strong feelings among the coastal states. As if in response to this idea, which seemed to them singularly self-centered, Malaysia extended her territorial sea to 12 miles to the great embarrassment of Japan, though the latter was not necessarily the immediate target of the extension. (28) Japan's refusal to recognize the new limit of Malaysia's territorial sea resulted in a delay in resuming the oceanographic survey of the Straits, which was therefore not completed until the end of 1970. In the meantime the Straits witnessed an accident in which a 104,000-ton Japanese tanker, the Showa Maru, was involved. She collided with and sank an 8,000-ton United States ship in the Straits in August, 1969.

In spite of these dangers and difficulties, some real and some imaginary, in the Malacca Straits, there does not seem to be a practicable alternative route for large tankers. Three possibilities are reported to have been tried or conceived to date. The first is a detour by way of an Indonesian strait between the islands of Bali and Lombok, which requires an extra 2-1/2 days. (map no. 9) (29) An estimate shows that if a 200,000-ton tanker makes 9-1/2 detours a year, the extra expenditure would amount to approximately \$1/4 million. (30) The second was an abortive offer by a United States oil concern to open a 150-kilometer canal across Thailand, which was not accepted by the Thai government. The third was a similar but somewhat more sophisticated offer by a Japanese firm, proposed in July 1970, to build a cross-country system by pipeline instead of a canal. (31)

From the foregoing it follows that the issue of passage through the Malacca Straits is potentially explosive. Until it is amicably resolved, it presents an extremely serious problem to Japanese natural resource policy. Since the latter part of the 1960's whispers began to be heard on the need to approach the issue with renewed vigor and from a different angle. Now the sound has intensified into a chorus of public outcries throughout Japan, and the Japanese government is making strenuous efforts to cope with this vitally important problem. Her foreign policy is being re-directed to what may be called resource diplomacy. Priority in selling is giving way to priority in buying.

The immediate choice for Japan, as she now sees it, is to develop oil resources by herself. This idea of "self-development"<sup>(32)</sup> - a term fondly used in Japan because of its appealing implication - is not only self-contradictory but also dual in its meaning: self-development abroad and self-development at home. It is self-contradictory, since it does not simply mean shopping for raw materials in foreign markets but trying to develop what are in somebody else's hands. Whatever may be the case, this aspect of self-development does not fall within the scope of the present discussion, but the difficulties involved underline the significance of what is discussed below: namely, the development of domestic resources in Japan.

With her need and technology, Japan could hardly have left any significant amount of land resources untapped, unless out of miscalculation. The near exhaustion of land resource potentiality is, in fact, the main reason for Japan's intensive preoccupation with the prospect of marine resource development. Japan is by no means unaware of her lag in ocean development, and can be expected to make up for the delay in no time with her technical ingenuity and her capability for creative imitation. The lag up to the latter part of the 1960's can be said to have been due to a lack of preparedness to undertake the promotion of industry on the colossal scale that is now envisaged.<sup>(33)</sup> It is interesting to note what followed her failure to develop oil from her own offshore areas off Akita Prefecture of northeast Honshu during the late 1950's to the early 1960's. Deficient technology was said to be the cause of failure. In the meantime, the demand for oil began to grow so rapidly that she had to preoccupy herself with importing it from overseas. As a result, an exodus of Japanese oil interests took place, thereby leaving an erroneous impression behind that oil was only to be had from abroad. In fact, there were as many as 21 Japanese oil companies operating abroad toward the end of the 1960's. Few of these have been successful, with the pioneer Arabian and the North Sumatra Oil Companies the most notable exceptions.

While Japan was busily looking far away at the other side of the ocean for oil, the happy news arrived of the ECAFE findings in 1968 that oil was likely to be present in great quantity right at her own doorstep. However, it was a foreign oil company, the Royal Dutch Shell, that first started a systematic search in the offshore areas of Japan with a domestic firm, the Mitsubishi group. When, toward the end of 1968 and again in April of 1969, exploration began in the Sea of Japan off Shimane Prefecture, the Japanese government was reported to have been fairly embarrassed and immediately sponsored a geophysical survey in order to confirm the ECAFE report. The preliminary report of the survey by the Tokai University team in 1969 and 1970 produced similar and equally encouraging conclusions for the government.<sup>(34)</sup>

Hereupon, the interest of the government as well as the business community was redirected to developing oil from the offshore areas. Ambitious plans were established by the government, while the business world turned its attention inward from abroad, thereby creating what might be called "a black-gold rush." It is of interest to note that the

Ryukyu government alone received no less than 24,864 applications for sea-bed mining rights over the continental shelf around the Tiao Yu Tai islands said to be most promising of oil.<sup>(35)</sup> It is no exaggeration to say, therefore, that the dawn of the 1970's in Japan marked the beginning of an era of ocean development, especially of mineral resource exploitation on the sea-bed.

## (2) Unilateral Claims

Most of the shallow sea areas off the coasts of Japan, with the exception of those between Tokyo and Kyushu along the Pacific coasts, have been divided into prospective mining blocks of various sizes and placed "under application" for sea-bed mining rights by different oil companies. So far as Japan is concerned, however, the topography of her offshore areas other than the Korea Straits and the East China Sea leaves rather little likelihood of controversy between coastal states. The discussion here is, therefore, confined to areas where claims overlap due to different criteria of delimitation employed by the coastal states. In 1969 four oil companies of Japan applied for mining rights over specified areas thought to be most promising in the Korea Strait and the East China Sea. In doing so, it might be added, they had to display impressive patience in the face of Gilbertian complications.<sup>(36)</sup> The four blocks, which are still "under application," pending approval by the government, form a chain, roughly following the general direction of the Okinawa Trough. (map no. 5)

Though the four blocks are delineated mostly by virtue of the principle of equidistance, within the median line between Japan and the state opposite, these blocks cannot yet be assumed to represent an official unilateral claim by Japan to adjacent areas of the continental shelf. The Japanese government will involve itself legally in this issue only when and if it either approves an application thereby authorizing the applicant to develop oil within the areas under dispute, or formally defends the position of the applicants on their behalf. As none of the applications for the disputed areas is reported to have been approved to date<sup>(37)</sup>, probably because of the extremely delicate nature of the matter, the Japanese government's position has to be inferred from circumstances that fall into the latter category. As a matter of fact, talks were held at the request of Japan, once with Taiwan in October 1970, and twice with Korea in November 1970 and September 1971. On each occasion Japan purported to be defending the interests of applicants for a Japanese mining license.<sup>(38)</sup> In contrast to this Japanese practice, it was the government in both Korea and Taiwan that took the initiative by specifying the location of each mining block and entering concession contracts with foreign oil interests, so that the seaward limit of each block thus designated has, by implication, come to represent the outer limit of the respective state's official claim to the continental shelf.

Subject to this technical point, however, it can be said the Japanese policy for demarcating the seaward limit of the blocks relies almost exclusively on the equidistance principle embodied in Art. 6(2) of the 1958

Convention on the Continental Shelf. Opposition to this from Korea and Taiwan has been straightforward, directed not only at the principle itself but also at the base points claimed (all elevations above water at high tide).

### (3) Unilateral Claims of Ryukyu Government

The Ryukyu Islands are due to be transferred to Japan by the United States on May 15, 1972, when the former will then resume full sovereignty over them upon termination of what is called residual sovereignty. (map no. 11) This transitory status of the Islands provided the Ryukyu (Okinawa) government under the United States control with a pretext to involve itself in the matter of jurisdiction over certain adjacent offshore areas considered most likely to have oil deposits. It is, therefore, appropriate to outline the symbolic claims made by Okinawa in connection with the development of oil in the East China Sea. (map no. 5) These claims can be observed from two different aspects.

The first is the internal competition for oil among the local oil enthusiasts. It was in early March, 1969, that a batch of applications for mining rights covering 5,527 sea-bed sections was submitted to the government by a native of Okinawa. The area specified was situated around a group of eight uninhabited islands, called Tiao Yu Tai Islands by the Chinese and the Senkaku Islands by the Japanese. This was immediately followed by another batch of applications submitted in the name of another native of Okinawa who was backed by a Japanese oil group supported by the Japanese government. The area covered in this second batch of applications for 7,611 sea-bed sections was situated west of those specified in the first applications, slightly overlapping with each other. The competition for oil among the natives themselves further aggravated by the advent of a third applicant, who intended to take advantage of documentary discrepancies found in the papers submitted by the first competitor by sweeping over 11,726 sections including most of his intended victim's. (39) In reality, however, the competition was not only among the natives but also between local interests on the one hand and mainland Japanese interests on the other, as may be seen from the fact that the second batch of applications was submitted in the name of a native simply to meet the requirement that applicants must be residents of Okinawa.

The second aspect of the Okinawa claims is, in a sense, "international". Taiwan and Gulf Oil entered a concession contract in July, 1970, to develop oil from a specified area which included the Tiao Yu Tai Islands. Hereupon, Japan almost immediately contested Taiwan's claim to ownership of the islands, and this was the beginning of the so-called Tiao Yu Tai controversy. (40) In the face of this unexpected territorial issue, the Ryukyu government was aroused to reinforce its own claims by announcing in September 1970 that the island belonged to the Ryukyus and that the delimitation of continental shelf boundaries would therefore have to be made in compliance with the median-line principle enunciated in the Continental Shelf Convention: that is to say, the islands under dispute would have to be used as base points. It was also hinted at the same time that the applications

submitted for sea-bed mining rights would be favorably considered for approval before the end of the year. In fear of a possible "loss" of oil to non-native applicants, however, the Ryukyu government conceived the idea of forming an oil company of its own. This intention was made public on December 4, 1970. But on that very day, China broke a long silence and virtually silenced the coastal states by warning that the Tiao Yu Tai Islands as well as Taiwan itself and the sea-bed oil resources all belonged to her. The oil-fuss on Okinawa has been little heard of since.

## C. Taiwan

### (1) The Demand for Oil

The domestic production of oil in Taiwan is also negligible as in Japan, since it does not exceed 2% of her total demand for oil per year. She produced about 80,000 tons in 1969, which was barely 1.7% of the total demand of the year. The total underground reserve is also insignificant, being estimated at approximately 3 million tons.<sup>(41)</sup> In 1969 alone, therefore, over 4.6 million tons (98.3%) of oil had to be imported at a cost exceeding 5% of her total foreign trade earnings (\$1,050 million) for the year. Between 1954 and 1969 Taiwan's demand for oil increased at the annual average rate of 17%, but the increase has become progressively higher in recent years: the increase in 1969 over the previous year was as much as 41.5%.

The importance of oil can also be seen from the fact that Taiwan meets over half her total demand of energy with oil, the rest being met with a combination of other resources such as coal and natural gas. In 1969, oil met 46.5% of the energy requirement, whereas in 1954 the ratio was 17.5%. This ratio is expected to change further in favor of oil. It is also estimated that during the 1970's the demand for oil will increase at the average rate of 10.1% per year and that for natural gas at 20.6%. These figures sufficiently explain the important position of oil in the economy of Taiwan as well as her enthusiasm to develop it from the offshore areas.

### (2) Unilateral Claims

As in Korea, the Taiwan government took the initiative in the presentation of offshore claims, which can be said to be much more systematic than those of Korea and Japan. It is also of interest to note that they were based on the constitutional assumption that, effective control apart, the Taipei government represents China as a whole. The escalation of Taiwan's measures may be traced in chronological order.

The first step was the announcement made by Taiwan on July 17, 1969, to the effect that she would exercise sovereign rights over all the natural resources in the sea-bed and subsoil adjacent to her territorial sea. On the face of it, this appeared to be simply an application of Art. 2(1) of the Continental Shelf Convention to the East China Sea, but in fact it turned out to be a warning to the other coastal states that the East China Sea was not open to all comers with the means to explore and exploit the shelf.

The second step was the signing of four development contracts with foreign oil interests between July and September of 1970.<sup>(42)</sup> The four concession blocks with their geometric simplicity of shape also form a chain stretching northeastward from Taiwan Strait, covering approximately 100,000 sq. kms. altogether. (map no. 5) The seaward limit of each, with the exception of Block I which lies in the Strait, is roughly along

the general direction of the 200-meter contour line, thereby suggesting reliance on the natural prolongation of land territory as the legal ground in shelf delimitation.

The third legal development was the rather hasty passage of a law on August 25, 1970, for the regulation of sea-bed mining. Its 16 articles fairly exhaustively itemise procedural and operational requirements for sea-bed oil development and would be applied provisionally to the four specified blocks for three of which contracts had already been signed.

The fourth move was the ratification of the Continental Shelf Convention for which the domestic procedure was also hastily completed in August 1970. The instrument of ratification was deposited at the United Nations on October 14, 1970, to make Taiwan the 43rd party to the Convention. It should be pointed out here that the ratification was accompanied by a 2-point reservation clause deliberately formulated to strengthen Taiwan's argument against Japan over the Taio Yu Tai issue.<sup>(43)</sup> Taiwan would not only rely on the theory of natural prolongation of land territory but also disregard isolated small islands and rocks. It may be added here that the judgment of the North Sea Continental Shelf Cases of February, 1969, could scarcely have been more timely for Taiwan as well as for Korea.

The fifth step was the establishment of the so-called five sea-bed reserve areas on October 15, 1970. This was an ambitious extension of Taiwan's claims beyond the existing concession blocks by adding another block north of the fourth. It was implied that the west end of the reserve areas would be the mainland Chinese coast and specified that the eastern (seaward) limit would be the median line running down the Okinawa Trough. (map no. 5)



#### IV. The Conflict of Claims

The wildcat competition for sea-bed oil in the Yellow Sea and the East China Sea has, in essence, been a three-party game among the coastal states, although the government of Ryukyu may also be added simply by way of counting the number of straws in the glass. Each of them is engaged in the unilateral delimitation of continental shelf boundaries as between opposite parties. But each has relied on an alleged principle of international law which is not accepted by the others. Accordingly, at few points do the seaward boundaries coincide, and mostly they overlap by considerable distances. Japan invariably insists on the median-line principle, Taiwan on natural prolongation of land territory, and Korea on half of each. These coastal states have thus produced altogether 17 blocks, differing in legal formulation. Only four remain uncontested largely by virtue of their "less central" location, while the remaining 13 are locked in complicated confusion, as shown in the following table:

##### Overlapping Mining Blocks

J=Japan K=Korea T=Taiwan R=Ryukyu (based on map no. 5)

	J-1	J-2	J-3	J-4	K-4	K-5	K-6	K-7	T-2	T-3	T-4	T-5	R
J-1									X	X			X
J-2								X		X	X	X	
J-3						X		X				X	
J-4							X	X					
K-4												X	
K-5			X									X	
K-6				X									
K-7		X	X	X							X	X	
T-2	X												X
T-3	X	X											X
T-4		X						X					
T-5		X	X		X	X		X					
R	X								X	X			

1. The Japanese blocks are numbered merely for the convenience of illustration in this study only.
2. The table can be read either sideways or downward to obtain the same result. By reading sideways or downward from "T-2" (Taiwan's Block 2) for example, it can be seen that it overlaps with "J-1" (Japan's Block 1) and "R" (Ryukyu Block).
3. Korea's Blocks 1, 2 and 3, and Taiwan's Block 1 do not overlap with any blocks, and are not therefore entered in the table.

Because of the highly arbitrary shapes and locations of the blocks, it would be rather improper to derive too much significance from the density of concentration. However, the table of conflicting claims may indicate where the battle is going to be hardest and what kind of response will be provoked by the slightest sniff of oil from any of the overlapping blocks.

It may be relevant to point out that the multilateral involvement of foreign oil interests makes it necessary to look at the issue from another perspective. For instance, Gulf Oil has spread its interest among three of the four parties involved in the dispute, while Texaco and Shell have spread their interests between two.

(A) Foreign Oil Companies Operating in Japan, Korea and Taiwan  
(in Yellow Sea and East China Sea only)

J A P A N	K O R E A	T A I W A N
J - I --	K - I Texaco	T - I Amoco
J - II Gulf	K - II Gulf	T - II Gulf
J - III Texaco	K - III Shell	T - III Oceanic
J - IV Shell	K - IV Gulf	T - IV Clinton
In partnership with Japanese firms.	K - V Texaco	T - V ---
	K - VI Shell	
	K - VII Phillips	

(B)

JAPAN	KOREA	TAIWAN
Gulf	Gulf	Gulf
Texaco	Texaco	--
Shell	Shell	--

This is by no means to say that the involvement of foreign interests is either aggravating or simplifying the issue, but that the individual coastal states are left guessing how their interests are affected by the fact that a particular foreign firm has committed itself on both sides of the conflict.<sup>(44)</sup> For obvious reasons, Korea has reportedly been far more sensitive to this point than the other two states. This is easily understandable from the fact that Korea has to take advantage of the existing seller's market for oil and exhaust every means of developing offshore resources that are subject to a legitimate claim. The need is proportionately far more pressing in Korea than in either of the other states, because the demand for oil is one of the major factors that contribute to serious deficit in her foreign trade.

### V. The Attempt at Regional Joint Development

The arbitrary claims which the three coastal states have made unilaterally over parts of the East China Sea have invited stubborn resistance from one another. Though on the surface it appears to be a three-party confrontation, in reality the argument is directed against Japan by Korea and Taiwan respectively, since these two parties have little reason to regard each other as an immediate economic threat as Japan is to each of them. The absence of rivalry between Korea and Taiwan is partly due to the fact that, though their sea-bed mining blocks overlap to a considerable extent, the 5th block of Taiwan which wedged deep into three blocks of Korea remains a reserve area with no development contract awarded, and that the overlapping elsewhere is only marginal. The legal ground on which they base their argument against Japan also has much in common because of their strikingly similar geographical and topographical features of the two critical offshore points in question, namely, the Danjo Gunto and Tori Shima between Korea and Japan and the Tiao Yu Tai Islands between Japan and Taiwan. (map no. 6)

The Japanese government was therefore deeply perplexed by the promptness with which Korea and Taiwan had been taking a series of formal government measures to press their unilateral claims, whereas in Japan the matter still rested on the relationship between the government and the applicants for mining rights. In fact, the domestic oil interests in Japan expressed their impatience by pressing the government to enter negotiations with Korea and Taiwan to determine continental shelf boundaries.<sup>(45)</sup> After all, it became necessary for Japan to ascertain the respective stand of Korea and Taiwan by means of formal contacts and to propose talks on the problems of continental shelf boundaries. In order to be better prepared for the talks as well as to meet the growing challenge of the problems involving the law of the sea in general, a team of specialized personnel was formed within the Foreign Office in August, 1970. Preliminary talks were held with Taiwan on October 23, 1970, and with Korea on November 4, 1970, at which each of them merely repeated her earlier stand. The attitudes of Korea and Taiwan were so firm on their respective stand that they even voiced scepticism on the need for talks. None of them was therefore surprised by the totally unproductive outcome of the talks. Korea and Japan repeated the same arguments on September 28, 1971. Because of the nature of the problem, however, the deadlock remains, desirous as the parties are of settling the issue before they may find themselves dealing with it at arm's length once the "black gold" is in sight.

Because of the pressing need for oil, it was thought to be absurd to delay development from their own continental shelves simply because of the difficulty of agreeing on the boundaries. Since the need for a breakthrough was regarded as urgent, the idea of joint development was conceived and genuinely welcomed in some quarters. Its original author was Taiwan. The proposal is said to have been intimated to the top level of the Japanese government in the spring of 1970, with a view to developing about 10,000 sq. kms. off the west coasts of Taiwan under joint efforts. The proposal was

repeated by Taiwan in June and August, 1970, while Japan was contemplating it very cautiously. Japan had to be cautious because the proposed area was in the 83-140 nautical miles wide Taiwan Strait between Taiwan and the mainland of China. Finally Japan committed herself to the proposal to the point of exchanging visits by competent personnel for further discussion. It may be speculated that this acceptance of the proposal could not have been motivated solely by Japan's need for oil, pressing as that is. In the beginning, then, the idea was for Japan and Taiwan to attempt joint development of oil from an offshore area with which Korea had nothing to do.

Support for joint development had already been expressed by the business circles of Japan and Taiwan in July, 1970, when the so-called Japan-Taiwan Cooperation Committee proposed in a communique that Japan, Korea and Taiwan join efforts to develop the sea around them.<sup>(46)</sup> This idea was made public again by the oil groups of Japan in early November 1970. Formal agreement was reached at a meeting of non-governmental interstate organizations held in Seoul on November 11-12, 1970, when a three-party liaison committee was formed. To develop continental shelves, the business groups of the three states would found an ocean development corporation with joint investments. The basic idea was to "freeze" the problems of jurisdiction and boundary delimitation and leave them to the governments concerned, while the oil groups proceeded with their development plans under a non-governmental arrangement. The liaison committee met again in Tokyo on December 21, 1970, when a special committee for ocean development was formally organized, with its operational procedures stipulated in detail.<sup>(47)</sup> Thus, it was originally conceived by Taiwan, but was taken over by a Japanese business group to organize it as a three-party venture.

The attempt at joint development appeared at the beginning to signify a possible breakthrough from the deadlocked confrontation of the coastal states over the delimitation of continental shelf boundaries. But it ended inevitably in failure for two highly practical reasons. From a legal point of view, jurisdiction over the continental shelf is identified with the sovereign rights of the state and is therefore highly unlikely to be "frozen" by virtue of a non-governmental arrangement. What the so-called liaison committee intended to achieve was basically and exclusively the business of the three governments, each of which had already firmly committed itself otherwise. Furthermore, if by any highly improbable chance, oil were jointly developed in disregard of jurisdictional problems, there would still remain the ultimate problem of distribution, which would arouse a far more serious confrontation. From a political point of view, if the sponsor of this peculiar idea had acted with the wishful thinking that China would still continue to remain silent on the affairs of the sea, as she had been since 1958 when she announced her territorial sea policy<sup>(48)</sup>, it should be said quite rightly that their faculty of judgment was seriously affected by their obsession with oil.

For these reasons, the move to develop oil jointly failed to receive public approval, except in Taiwan where it originated. The reaction of the governments of Korea and Japan was non-committal, since they had not been informed of the proposal in advance and it was being promoted at a level

usually free from government interference. In Korea, opposition was voiced against any compromise over continental shelf jurisdiction under the pretext of joint development. In Japan, it was rightly feared that the attempt would simply arouse China to direct her attention to this particular issue. Not entirely unexpectedly China broke her long silence on December 4, 1970, to the great consternation of the states concerned. But the significance lay not so much in the Chinese protest itself as in the reactions of the states criticized.<sup>(49)</sup> Thus, as may be seen below, the idea of joint development of the continental shelf oil by Japan, Korea and Taiwan, which was prompted as an expedient under the circumstances, was cut down by an act of intervention even before its own intrinsic weaknesses could be discovered.

## VI. The Reaction of China

China has a coastline of approximately 11,000 kilometers (about 6,000 nautical miles).<sup>(50)</sup> This alone indicates the importance of the sea for China, even if national interest were limited to defense and economic development. Throughout most of her history, however, the Middle Kingdom felt little need to use the sea intensely, compared with early modern maritime powers in the West like Spain, the Netherlands and Britain. Traditionally, the sea was regarded by Chinese as a natural defense against barbarians. It was not until the mid-19th century that the sea began to be recognized as a convenient route for invasion from without. In each of the six major invasions China suffered between 1842 and 1900 the enemy used the sea as their sole or major route, and on three of the six occasions they entered by way of Pohai Bay to reach Peking itself, less than 100 miles inland. China's 12-mile territorial claim in 1958 and other related measures should be viewed against that historical background, as well as in the light of more immediate factors.<sup>(51)</sup>

The 1958 declaration referred only to the breadth of territorial sea, the adoption of direct base-line system and the international sea resulting from it, the entry requirements for foreign ships and aircraft, and the extent of its application to outlying territories. It was promulgated five months after the 1958 United Nations Conference on the Law of the Sea and so the adoption of some of the Geneva principles can be taken as proof of China's intention to stay, at least formally, within the broad framework of the Geneva conventions. The absence of any reference to the continental shelf can be attributed to the fact that there was little concern on this issue among the states of the Far East at the time, except perhaps at the academic level. On this particular subject, China was to remain silent until December 4, 1970, when she came out with a strong claim to sovereign rights over the continental shelves, mainly those of the Yellow Sea and the East China Sea. The method and timing of this new claim are explained by reference to two developments, one internal and the other external.

The internal reason has to do with China's demand for and supply of oil in general. On this kind of subject it is difficult to be exact because of the nonexistence of reliable official statistics. One is left to resort to some kind of guesswork, innocent or inspired, based on common sense or on occasional published figures.<sup>(52)</sup> Since oil statistics have the same kind of strategic significance for China as for other countries we have to grope uncertainly in what may be described as an official "information blackout." Yet from different sources, the statistics on the reserve and production of oil in China may be gleaned as follows.

Production and Reserve of Oil in China(A) Production

1949:	120,000 tons	(a)
1961:	6,200,000 "	(b)
1962:	6,800,000 "	(b)
1963:	7,500,000 "	(b)
1964:	8,500,000 "	(b)
1965:	10,000,000 "	(b)
1966:	13,000,000 "	(c)
1967:	11,000,000 "	(c)
1968:	15,000,000 "	(d)
1969:	20,000,000 "	(d)
1970:	20,000,000 "	(e)

(B) Reserve (crude oil)

Estimate of

1951:	2.1 billion tons	(f)
1957:	17.0 " "	(f)
1966:	60.0 " "	(f)

(C) Reserve (shale)

Estimate of

1959: 360.0 billion tons  
(g) (on the basis  
of 6% of oil per  
ton, this amounts  
to 20.0 billion tons  
of crude oil.)

- (a) Asahi Shinbun, July 8, 1970.\*
- (b) K.P. Wang, "Mineral Resource Base of Communist China", An Economic Profile of Mainland China, pp. 167-95, Vol. 1, Joint Economic Committee, Congress of the United States, Feb. 1967.
- (c) Ta Lu Wen Ti Chuan Ti Yen Chou (Specialized Study of Continent Problems), p. 3, No. 45, Nov. 1969, Taipei.
- (d) United Nations Statistical Yearbook, 1970.
- (e) Asahi Shinbun, Chou-Snow dialogue in 6-weekly series (No. 1, April 11, 1971).
- (f) C.S. Chen, p. 7, see footnote 52.
- (g) Chinese Ministry of Petroleum Industry, as quoted at p. 15, see footnote 52.

Of the above figures, the one for 1970 should be said to be one of the authentic ones, having been quoted by an incontestable official source.<sup>(53)</sup> Its reliability has, however, been questioned in Taiwan, where it is suggested that the production of crude oil in the Mainland in 1970 could not have been

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\*The production of crude oil in 1949 was only 69,000 tons, not 120,000 tons, according to the People's Daily (Jan. 9, 1966) as quoted at p. 83, Taching -- Chungkuo Kungyuehwade Jungchue Taolu (Taching -- the Royal Road to the Industrialization of China), the Kung Ren Press, Peking, 1966.

20 million but only 14-1/2 million tons, due to the adverse effect of the Cultural Revolution on industries.<sup>(54)</sup> It is of interest also to note the statistics from Japan, which suggest that China's crude oil production in 1968 was over 40 million tons.<sup>(55)</sup> Whatever may be the case, it cannot be denied that China has been not only increasing her oil production but also retaining a much greater reserve than any of the other states in the Far East.

Externally, China's claim to the continental shelf was a response to what was being done, individually and then jointly, by the other coastal states of the Yellow Sea and the East China Sea, as described above. The movement, led by Japan, to develop oil from the continental shelves of the region aroused China to make a strong protest against them as well as against the United States on December 4, 1970. Though she had earlier - on November 20, 1970 - hinted at an awakening interest in the sea by giving ardent support to Latin American claims to 200-mile zones of national jurisdiction, the rapidness of the East Asian attempt at joint exploitation clearly precipitated the Chinese counter-claim and injected a dose of acrimony in its formulation. Claim was made, in brief, both to sovereign rights over the continental shelf resources underlying the shallow areas of the region and to the ownership of the Tiao Yu Tai Islands.

None of the other claimants could afford to dismiss the Chinese claim as just another blast of propaganda. Too much was at stake for all contestants. The most shocked reaction was felt not by the originator of the joint endeavor (Taiwan) but by the one most active in promoting it (Japan). Both Taiwan and Korea postponed their reaction in order to survey that of Japan and the United States. In the aftermath of the strongly worded Chinese statement, the three-state meeting scheduled to be held in Tokyo on December 21, 1970, lost most of its original purpose and excitement, though it occasioned another similar protest by China on December 29, 1970, with its tone even stronger than that of the previous one.<sup>(56)</sup>

The protests of December 4 and 29, 1970, were reiterated at a semi-official occasion, when on March 1, 1971, a joint communique was issued in Peking upon conclusion of the annual Sino-Japanese memorandum trade conference.<sup>(57)</sup> Japan was seriously disturbed not only by the intrinsic acrimony of the statement bitterly criticizing her economic and international policies, but also by the fact that it was issued in the name of both delegations, though non-governmental. Two of its nine paragraphs referred to the attempt for Japan, Korea and Taiwan to develop jointly the continental shelf resources of the Yellow Sea and the East China Sea. This plan, it was asserted, would constitute an overt encroachment on the sovereignty of China and would not be tolerated. Though the three-state liaison committee on March 16, 1970, expressed its readiness to ignore these repeated protests by China and to hold another planning conference the following June, this effort was to prove abortive.

The strict warning by China began to take effect from the middle of March 1971, as the governments of Japan and the United States began to show their reaction to it in rather quick succession. On March 11, 1971, the Japanese government made its stand clear that, in order to avoid friction



with China, attempts to develop oil from Taiwan Strait and from the continental shelf around the Tiao Yu Tai Islands would be suspended, in the latter case, pending return of Okinawa to Japan by the United States in May 1972. But the real surprise came from Washington, when the U.S. State Department clarified the position of the government that it would not be advisable for American oil firms to explore for oil deposits in the offshore area under dispute between the coastal states, since the government would not be able to intercede if their vessels were seized by China. (58) It was also added that the three coastal states had already been so notified in March. Obviously, the idea was not to allow oil to affect the detente between China and the United States. Japan had no choice but to follow suit, and thus all exploration activities throughout the Yellow Sea and the East China Sea, except those by a non-U.S. Company (Royal Dutch Shell) had come to a standstill by mid-April 1971. Korea and Taiwan were perplexed by the assiduousness of the Japanese and American compliance with the Chinese warning and kept pressure on the licensees to observe the terms of their contracts. Late in the summer of 1971 exploration in these areas was resumed but with ships flying non-U.S. flags.

## VII. Issues

In the present discussion, the chief issue is the problem of delimiting the continental shelf boundary between the opposite coastal states of the Yellow Sea and the East China Sea. The conflicting claims of the five coastal governments, described above, emphasize the complexity of the issue. Essentially, the issue is a three-party controversy, for the interests of Japan and the Ryukyu Islands are really the same, as are those of China and Taiwan. The claims of the three contestants - Korea, Japan and China - overlap to a considerable extent with each facing the others and Korea placed in the middle. The legal principle relied on by Korea is, therefore, crucial both to the Korean-Chinese and to the Korean-Japanese issues of shelf delimitation. The Chinese-Japanese issue, on the other hand, focussing on the Tiao Yu Tai controversy, consists of two distinct aspects, one a conflict of territorial claims, the other a conflict of claims to jurisdiction over the adjacent shelf.

### A. Korea v. China

The outer limit of Korea's sea-bed mining blocks, the 1st to the 4th and part of the 7th facing China, represents the continental shelf boundary between Korea and China, as far as the former is concerned. The unilateral delimitation by Korea does not stretch into the northern third of the Yellow Sea. The Korean position is based on the median line principle, with the numerous islands on both coasts included for the purpose of drawing baselines. When Korea designated her mining blocks for concession, it was on the assumption that their seaward limit would constitute the boundary of the continental shelf shared with China and Japan. In contrast, the only Chinese counter-move was Taiwan's designation of five "reserve" blocks in the East China Sea, which cannot be said to represent her legal effort to establish a comprehensive boundary line with Korea. A discussion on the overlap between the 4th, 5th and 7th blocks of Korea and the 4th and 5th "reserve" blocks of Taiwan is therefore thought to be premature, if not meaningless.

Mainly for reasons of geography and topography, the delimitation of the continental shelf boundary between Korea and China is simpler than between Korea and Japan or between China and Japan. First, in the Yellow Sea and the East China Sea, the depth nowhere exceeds 200 meters except in the Okinawa Trough where a Korean-Chinese boundary is not applicable. Second, numerous as the islands are in the offshore areas of both states, they are situated fairly close to the coasts, so that their presence alone is not likely to cause serious inequity in the delimitation of the boundary. In the absence of agreement, therefore, these geographical factors might be said to justify the application of the median line principle between Korea and China. However, the acceptance of the principle would not necessarily mean an easy agreement on the boundary, since the method of application is as much a potential source of controversy as the principle itself.

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the legal status of some of the numerous offshore islands on either or both sides may emerge as a source of disagreement, not so much because of their location as because of their merits. Furthermore, when it comes to the point of actual demarcation, the accuracy or reliability of the charts may also cause disagreement. The fact would have to be admitted by both Korea and China that, in view of the relationship between them, there has been no opportunity in recent decades to become familiar with the geophysical features of each other's coastline, despite their proximity.

It may be supposed that the unilaterally delimited outer limit of the Korean mining blocks will have to undergo some adjustment, if the two parties choose to determine their continental shelf boundary by agreement. In the context of the Korean-Chinese issue, it is submitted that the median line principle clearly applies and that only the question of its application needs to be negotiated. But since Korean claims in the Korean-Japanese dispute rely on the different principle based on the natural prolongation of the land territory, it may be necessary for Korea to explain to China why the median principle applies in one situation and the prolongation principle in the other. Application of the latter in the Korean-Chinese dispute, so as to modify application of the former, would not be to Korea's advantage because of the sea-bed topography in the Yellow Sea.

### B. Korea v. Japan

The controversy between Korea and Japan over their continental shelf boundary may be analyzed by dividing the areas under dispute into two separate sectors: namely, the Korea Strait, and the East China Sea along part of the Okinawa Trough.

#### (1) In the Korea Strait

As may be seen from the map (no.5), the 6th block of Korea (K-6) and the one under application for mining rights by Nishi Nihon Sekyu Kaihatsu (West Japan Oil Development) Company of Japan (J-IV) overlap slightly. Their respective seaward limits cross each other at five points, thereby causing four marginal overlaps. In terms of size, the four pockets of overlap are so insignificant that they might be attributed to some innocent technical errors in drawing what were intended to be median lines acceptable to both parties. But alternatively the overlaps may be due to different interpretations of the legal character of some islands used as base points. Whichever may be the case, a compromise would not create great inequity or affect honorable face-saving. It should be unnecessary for either party to develop a legal argument over what can be settled through a simple re-plotting on the map. In other words, agreement ought to be reached without the need to resort to a principle of law. From a practical point of view, this may even be used as a point of departure for further negotiations over the boundary issues in the East China Sea. On balance, the conflict of interest between Korea and Japan arising from these insignificant marginal overlaps does not appear to merit extensive legal consideration.

#### (2) In the East China Sea

The controversy between Korea and Japan over the continental shelf boundary in the East China Sea can, on the other hand, be said to represent a genuinely serious continental shelf dispute between opposite states. At critical points in the disputed area there are many uninhabited islets and rocks, and a deep trough in the sea-bed. For two immediate reasons, the East China Sea shelf controversy is far more complicated than the North Sea shelf dispute was in the 1960's. First, the involvement of what may be called vertical elements such as troughs and islands makes it a three-dimensional argument. Second, even though the parties pretend to treat the issue as a boundary dispute, it takes the form at the beginning of a scramble to exploit prospective oil deposits underneath, rather than as an allocation of exploration zones marked out by surface measurements, as it originated in the North Sea. In legal terms, moreover, the East China Sea dispute also assumes the form of an argument over the conflicting principles of "special circumstances" and "median line."

The central issue here concerns itself with the 7th block of Korea (K-7) and the three Japanese blocks (J-IV, J-III and J-II) (map no. 5) which overlap with it and are under application for mining rights by Nishi Nihon Sekyu Kaihatsu (West Japan Oil Development), Teikoku Sekyu Kaihatsu (Imperial Oil Development), and Nihon Sekyu Kaihatsu (Japan Oil Development) Companies respectively. With regard to the marginal overlap of K-7 and J-IV, however,

the same argument may be applied as given to the case of K-6 and J-IV in the preceding section. With respect to the more substantial overlaps between K-7 on one side and J-III and J-II on the other, three important issues must be distinguished: the legal character of (1) isolated islets; (2) troughs; and (3) claims beyond the 200-meter isobath.

#### (a) Legal Character of Islets

The islands in question are a group of uninhabited and isolated islets and rocks owned by Japan. They consist of two separate clusters about 18 miles apart, called the Danjo Gunto and Torishima, the largest of the islets being only slightly over 2 miles in length. They are said to be so rugged as to be of little usefulness, even as an emergency shelter for fishing vessels. The only use so far is to provide a base for a lighthouse and a radio signal tower on Meshima. These otherwise obscure pieces of Japanese territory derive their value not from their intrinsic merits but from their location on the landward side of the Okinawa Trough. (map no. 6a, c) The controversy has originated from Japan's persistence, in the face of objections from Korea, in using the islets and rocks as base points in determining the median line between Japan and Korea. It is of interest to note that the only way in which Korea recognizes the legal status of this Japanese territory is to have left a 12-mile limit between it and K-7, although she has not defined the breadth of her own territorial sea and Japan still maintains the traditional 3-mile limit. Japan's adherence to the median line principle with Danjo Gunto and Torishima as its base points is refuted by Korea on the ground that they lack intrinsic merits as basepoints for a claim to maritime jurisdiction and that the Japanese continental shelf terminates on the eastern edge of the Okinawa Trough. In other words, Korea alleges and Japan denies that the Trough constitutes "special circumstances" to the exclusion of the median line principle from the area under dispute.

The legal status of islands in the delimitation of a continental shelf boundary has not been fully resolved, though efforts to seek agreement on it date back to the first U.N. Law of the Sea Conference held at Geneva in 1958. This can be rightly attributed to the fact that the geographical features of islands are so diverse that no single standard meets the common interest of the majority of states. This point may also be made, though perhaps in a lesser degree, in relation to other geographical entities that require legal definition for the purposes of the law of the sea. Meanwhile, the juridical fact remains that, like efforts to define the continental shelf itself, attempts to define an island for the specific purpose of delimiting a continental shelf boundary have yet to pass the test of theory and practice.

At Geneva in 1958 an attempt was made to assign a legal status to islands for the purposes of drawing a boundary. The Conference records show that abortive proposals were made by Italy and Iran to disregard islands on a continuous continental shelf.<sup>(59)</sup> There was also a suggestion by the British delegate which was not very definitive but was received favorably because of its apparent fairness. According to this idea, islands should be treated on their merits, so that very small islands or sand banks on a

continuous continental shelf and outside the belts of territorial sea would not be included as legitimate base points for boundary measurement.<sup>(60)</sup> The opinions expressed during the decade after the Geneva Conference of 1958 do not appear to indicate much progress beyond what was mentioned in Geneva, as may be seen from some of the examples quoted below.

No intention was found in the drafting of the Convention to disregard the existence of islands in delineating the boundary of the continental shelf. As a matter of fact, however, it may be possible that the boundary line of the continental shelf is drawn between the states concerned in inequitable manner due to the existence of even a very small island off the coast of one of the states. In cases where very small islands or sand banks exist, it may be justified, taking into account "special circumstances," to draw a boundary line in disregard of the existence of such islands.<sup>(61)</sup>

The existence of islands should not affect the determination of boundaries unless special circumstances exist.<sup>(62)</sup>

Any redefinition of the continental shelf must also give special consideration to the problems presented by islands. We have not been able to solve these problems to our satisfaction and, therefore, make no recommendation in this respect.<sup>(63)</sup>

Rocks and islands without a permanent population shall not be taken into account.<sup>(64)</sup>

Special provisions need to be made for islands which do not constitute separate states. To permit every island to control a shelf equal in size to that of a continent would not be equitable.<sup>(65)</sup>

It is useful, however, to trace the treatment of islands in continental shelf treaties. There are over 20 bilateral agreements to date, of which five may be quoted with reference to their regard or disregard of islands: namely, the agreement between Bahrain and Saudi Arabia of February 26, 1958; between Iran and Saudi Arabia of January 19, 1969; between Abu Dhabi and Qatar of March 20, 1969; between Italy and Yugoslavia of January 21, 1970; and between Iran and Qatar of May 10, 1970.<sup>(66)</sup> In these treaties islands were treated primarily on the basis of their size and location, and inequity arising from strict adherence to the Geneva formula was adjusted through compromise. In other words, small islands - especially those situated near the coasts - were disregarded as base points for measurement, and those situated near or at the median points were given due weight in the delimitation of the territorial sea only, thereby displacing the median line in favor of the state that owns them. Due weight was given, for example, to the Italian island of Pianosa, the Yugoslavian islands of Jakuba, Pelagruz, and Kajola, the Iranian island of Farsi, and the Saudi Arabian islands of Arabi and Kharg. Furthermore, the treatment of the Iranian island of Kharg between Iran and Saudi Arabia should be noted with particular interest for its important contribution to solving

the problems of small islands in boundary delimitation. Situated about 17 miles off the coast of Iran and connected with the mainland by an artificial link, a pipeline, it was given half-effect, which can be said to be the outcome of a negotiated compromise between full-effect and non-effect.

In the absence of an agreed definition for purposes of continental shelf boundary delimitation, the legal position of Islands can be said to be reasonably clear, however, from the foregoing observation of theory and practice. Against that background the case of the Danjo Gunto and Torishima may now be weighed. The size as well as the nature of these islets and rocks hardly supports the argument that they should be used as base points for the measurement of the median line vis-a-vis any opposite states. Because of their location, however, they deserve full effect for the purpose of delimiting the territorial sea, whatever its extent. For the different purpose of delimiting the continental shelf boundary, their legal status would be weakened by the fact that the continental shelf on which they are situated is not continuous from the Japanese land-mass, but from the land-mass of the state opposite, Korea. Japan's adherence to the median line principle in disregard of these considerations seems to have been influenced by two important considerations. First, without full effect being assigned to the isolated territory in question, it would be difficult for Japan to resist the argument that the outer limit of her continental shelf should be displaced to the middle of the Okinawa Trough, if not to its eastern edge. Second, should this happen as insisted upon by Korea, it would at the same time weaken Japan's stand against China to exactly the same extent, divorcing her from the entire continental shelf of the East China Sea.

#### (b) Legal Character of Troughs

The trough in question is the Okinawa Trough, which forms an arc along the southeast margin of the East China Sea between the territories of China and Japan. (map no. 4) At its deepest, the depth is 2,270 meters. As its seaward bank is the Ryukyu Ridge which consists of a chain of islands in the form of an arc fronting the Pacific Ocean; it is not so regular in structure as the Norwegian Trough, for example. Because of its critical location, as well as the promise of oil in the subsoil west of its landward bank, however, it has unexpectedly emerged as a source of serious legal controversy among the coastal states on both sides. With the exception of J-IV, which lies north of the Trough, the Japanese mining blocks are situated along its landward bank, whereas those of China declared by Taiwan extend to where the "natural prolongation" of her land territory ends and those of Korea extend as far south as the median line vis-a-vis China allows. As a result, it is along the landward bank of the Trough that the mining blocks of the three claimants overlap most conspicuously.

For reasons given earlier, however, the controversy is between Korea and Japan in the first instance, with China expected to assume the same legal stand as Korea without intending to support her claims in any way. This coincidence of interests arises for reasons of geography and topography only. In relation to Japan, Korea also relies on the "natural prolongation" of her land territory stretching the Trough-based argument as far as possible so as to



deny Japanese claims that cross over. In other words, Korea insists that the presence of the Trough constitutes "special circumstances" under which the median line principle cannot be applied. Japan, on the other hand, adheres to the median line principle with her outlying islets as its base points for measurement, and in so doing resorts to the precedents to be found in the bilateral agreements such as between Britain and Norway and between Italy and Yugoslavia, among others.

There has been less controversy to date over the legal status of troughs than over that of islands, since the number of troughs which divide otherwise common continental shelves is relatively small. But the trough issue has always been there, in the background, threatening any final effort to define the continental shelf in legal terms, as may be seen from the 1956 draft of the International Law Commission (ILC).<sup>(67)</sup>

In the special cases in which submerged areas of a depth less than 200 meters, situated fairly close to the coast, are separated from the part of the continental shelf adjacent to the coast by a narrow channel deeper than 200 meters, such shallow areas could be considered as adjacent to that part of the shelf. It would be for the state relying on this exception to the general rule to establish its claim to an equitable modification of the rule.

Neither is it possible to disregard the geographical phenomenon whatever the term - propinquity, contiguity, geographical continuity, appurtenance or identity - used to define the relationship between the submarine areas in question and the adjacent non-submerged land.

Though the Geneva Convention appears on the face to be silent on this point, the definition of the continental shelf as given in Art. I should nevertheless be taken to have referred to it indirectly, unfavorably through the depth criterion and favorably through exploitability. Thus, as in the case of islands, it is not easy to know how a trough is deemed to affect the drawing of a continental shelf boundary. The argument invariably depends upon the vague concept of equity.

As far as the legal status of troughs is concerned, the Norwegian Trough offers a more typical example. In the context of the present discussion, this North Sea trough attracts much interest, not only because of its rare geographical features, but also because of the difficulties that would have been created if one of the opposite states, Britain, had not agreed to ignore it as a limiting factor in drawing the boundary with the other, Norway. Almost unnaturally exact, the Trough follows the west and south coasts of Norway all the way close to the Swedish border, leaving only a very narrow belt of 2-10 nautical miles along the coasts. Its depth is said to range from 100-371 fathoms and its width from 20-81 nautical miles.<sup>(68)</sup> Britain and Norway signed an agreement on the shelf boundary on March 10, 1965, which came into force on June 29, 1965, based on the median line principle "with certain minor divergences for administrative convenience" (Art. 1). The reasons for

disregarding the Trough are believed to have been based on a number of factors such as equity, geology, the reminiscence of the 1951 Fisheries Case, and even particular security considerations as NATO member states. From the standpoint of Britain, the disregard of the Trough can be said to have been a compromise in the name of equity rather than the outcome of her complicity with any particular principle of international law, whereas from the Norwegian point of view it was just a perfectly normal consequence of legal and geophysical considerations.<sup>(69)</sup> By virtue of these physical and legal factors, the treatment of the Norwegian Trough presents a most appropriate precedent against which the case of the Okinawa Trough can be considered.

The mainland of Japan, which consists of Honshu, Hokkaido, Kyushu and Shikoku, has only a very narrow belt of continental shelf, and her Ryukyu Islands virtually none. It is fortunate for Japan that the Okinawa Trough ends where it does, on the north side, yielding to an area of shallow water off the southwest coast of Honshu and the northwest coast of Kyushu and adjacent to the Korean coast. Even so, by the 200-meter depth criterion, Japan is heavily at a disadvantage in claiming a share of the adjacent continental shelf, in spite of the fact that she is completely surrounded by the sea. Furthermore, in its geophysical features, the Okinawa Trough is very different from the Norwegian Trough. In the first place, it is much deeper and wider and does not follow the Japanese coast closely, leaving a fairly wide belt of continental shelf along the irregular coasts of Kyushu. Moreover, the Okinawa Trough is not simply a narrow channel deeper than 200 meters cutting across an area of the continental shelf like the Norwegian Trough. The Okinawa Trough is highly irregular, banked on the seaward side with a chain of volcanic elevations which form a bumpy ridge cut across by grooves far exceeding 200 meters in depth at many points, fronted by one of the deepest oceanic trenches in the world immediately beyond.<sup>(70)</sup> (map no. 10) Such differences would therefore strongly militate against any argument on the part of Japan that disregards the legal effect of the Trough as a limiting factor and applies the median line principle merely on the strength of the Anglo-Norwegian agreement of 1965. Under the circumstances, Japan finds herself having to apply the median line principle defensively in the face of strong Korean and Chinese adherence to the theory based on the natural prolongation of the land territory.

The focal point in this controversy is the legal character of the median line principle whose application in disregard of the Trough would constitute an exception to the general rule of adjacency implicit in Article 1 of the Convention of the Continental Shelf. The case for such an exception rests on the sense of the inequity that would otherwise arise. But equity or inequity defies precise definition. Furthermore, it is also doubtful whether mere geophysical accident can be a ground of inequity. Inequity of this kind cannot be the sole or principle basis of a legal decision, but only subordinate or complementary at best to the primary determinant.

The legal character of the median line principle must be considered in the light of Article 6 of the Convention on the Continental Shelf: "... the boundary...shall be determined by agreement... In the absence of agreement, and unless another boundary is justified by special circumstances, the

boundary is the median line..." After a reasonable period of time following the entry into force of the Convention, the absence of agreement might be supposed to be due to the absence of circumstances in which negotiations could take place to discuss the effect of "special circumstances." The median line principle provides the advantage of practical convenience and certainty of application, a combination that tends to encourage states to invoke it as the basis of a unilateral claim rather than as a reason for entering into negotiations. For this reason, it stands less as a principle of law than as a predictable point of departure in negotiations. Due to its intrinsic weaknesses, the principle did not stand the test of practice, as may be seen from the judgment of the North Sea Continental Shelf Cases of 1969, in which the International Court of Justice undermined the legal character of the median line principle with a new concept in continental shelf doctrine, namely, the theory of the natural prolongation of the land territory. (71)

From a practical point of view, therefore, it may be said that Japan's adherence to the median line principle is based not so much on a rule of law as on its interest in denying the legal effect of the Okinawa Trough and in enhancing that of the Danjo Gunto and Torishima Islands. The greater the effect of the former, the less would be the effect of the latter. By adhering to the median line principle, however, Japan is relying in effect on a convention against whose adoption she cast one of the three negative votes at the 1958 Conference on the Law of the Sea, and for which 57 states voted in favor. She refused to sign the Convention on the Continental Shelf and still has not done so, because reservations to Articles 1 and 2 were not admitted and the dispute provision as defined in the original draft of the ILC had been rejected. (72)

Thus, the legal argument to ignore the Okinawa Trough merely on the intrinsic strength of the median line principle does not appear to be sufficiently persuasive, unless extra-legal factors in its favor are taken into account. Legal considerations apart, the fact that Japan does not support the continental shelf doctrine defined in the Geneva Convention would also militate against her reliance on a principle embodied in it. Furthermore, the Japanese argument as a whole would have to be twice as convincing in view of the fact that she faces two determined parties, each with an adversary position common to that of the other.

#### (c) Claims beyond the 200-meter depth

Parts of K-6 and K-7 reach considerably beyond the 200-meter contour line. (map no. 5) But, in the case of the former, the "deeper" shelf does not run into conflict with that of Japan, nor is it likely to become the source of serious controversy with her at least in the foreseeable future, still less with any other states, since it plunges to depths close to 2,000 meters at some points and little is known of its mineral prospects. However, approximately a third of K-7 spreads over that part of the Okinawa Trough where the depth ranges from 200 to 1,300 meters. The outer limit of K-7 on the east appears to be intended to coincide roughly with the mid-channel of the Trough. The legal ground of the Korean claims to this part of the Trough can be said to be fairly vulnerable to challenge by Japan, unless it is clarified beyond doubt.

It is possible to discover some of the points at issue. First of all, the extension of the Korean claim into the Trough may weaken the legal effect of the Trough on which she relies to refute the Japanese claim to the west of the Trough. In other words, if Korea is entitled to part of the Trough up to its mid-channel, it would implicitly invite Japan to assume her claim to the other part, thereby eventually dividing the entire Trough between Japan on the one side and Korea and China on the other. This would not only reinforce the ground of inequity as between Korea and Japan, but would also give rise to the need to determine a second boundary between Korea and China, in order to divide between them that part of the Trough up to the mid-channel on their side. In fact, Korea has unilaterally demarcated such a boundary, in the sense that the outer limit line of K-4 and K-7 on the west extends out into the Trough from where it meets the 200-meter contour line. The direction of this second boundary line may therefore undergo slight modification in favor of either Korea or China should they choose to determine it by agreement. Secondly, from the standpoint of Korea, if the mid-channel or the "deepest channel" method has been applied to the Trough merely on the basis of an analogy from the "thalweg" method for river boundaries or simply by default, it can hardly be a wise choice of criteria, since, strictly applied elsewhere, it can affect the Yellow Sea continental shelf boundary to her disadvantage.

### C. China v. Japan: Controversy over the Tiao Yu Tai Islands

The controversy between China and Japan is not an argument over the continental shelf boundary alone, as it is between Korea and Japan. It consists of two distinct issues: one, the ownership of the Tiao Yu Tai Islands; the other, the demarcation of the continental shelf boundary. The latter issue is identical with that between Korea and Japan, concerned simply with the legal status of outlying islets and rocks, situated in a strikingly similar geographical setting, as well as with that of the same Okinawa Trough. As both have been discussed in the preceding section, the discussion in this section concentrates on the other problem, the territorial dispute over the Tiao Yu Tai Islands.

#### (1) General Background

The Tiao Yu Tai Islands consist of five uninhabited islets and three rocks without vegetation, which are situated about 120 nautical miles north-east of Taiwan, about 200 n. miles west of Okinawa and about 100 n. miles north of Ishigaki City, the nearest municipality at the southwest end of the Ryukyu Islands. They are all at the edge of the East China Sea continental shelf fronting the Okinawa Trough on the south. Tiao Yu Tao itself is the largest of them, being about 2 miles in length, slightly less than a mile in width and 363 meters high above sea level at its highest. (map no. 6-b) (73) As a whole, the islets do not appear to have much to offer except as a base for fishing in the area. Their obscurity in the past is reflected in the variety of names given to some of them since the mid-19th century. Names such as "the Pinnacle Group" or "the Raleigh Rock," with which some of them used to be identified even by Japanese hydrographers up to the early 1900's, appear to owe their origin to the exploratory expeditions by British ships during the 1840's. (74) A chronology of the various names with which they used to be known, sometimes erroneously, sometimes interchangeably, would show that Tiao Yu Tai, the main islet, alone used to be called by a number of different names in Chinese, English, Japanese and the native Ryukyu dialect. In this regard, it may also be noted with interest that, though the name of the main islet Tiao Yu Tao dates back to the early 15th century according to an extant Chinese record referred to below, the collective use of the name to denote the entire group appears to be new, probably because of the lack of necessity, prior to the advent of the controversy between Japan and Taiwan in 1970. The Japanese name of the Senkaku Islands is also new, dating back to 1900 when a study tour of the islets and rocks was conducted under private initiative. The absence of a collective name seems to have led the writer of the report to coin one, for the sake of geographical convenience, choosing "Senkaku" (a pointed house) apparently because of its similarity to the English "pinnacle." (75)

For a proper historical analysis of the Tiao Yu Tai Islands issue, it is necessary to trace the history of the extinct Ryukyu kingdom, which maintained vassalage with the Ming (1368-1644), and later with the Ching (1644-1911), dynasties of China. For over 500 years up to 1879 when it became a prefecture of Japan, Ryukyu's kings were crowned by the Chinese emperors who used to send their representatives for the coronation ceremonies

in Ryukyu. The oldest extant reference to Tiao Yu Tao is found in a navigation record of 1403.<sup>(76)</sup> However, it is in the log-books of Chinese envoys that more specific references to the Tiao Yu Tai Islands are found. Situated centrally between China and Ryukyu, these otherwise useless islets and rocks provided the Chinese with a convenient landmark for navigation. Of the dozen or so complete collections which are said to be extant, three written in 1534, 1559, and 1562 make specific mention of the boundary of the Ryukyu kingdom.<sup>(77)</sup> Besides these Chinese records, there are also a native Ryukyu record of 1708 and two Japanese maps of 1783 and 1785, each specifying the boundary of the kingdom, though the last one does so only indirectly.<sup>(78)</sup> It must be pointed out here that the boundary referred to in these six records is substantially the same, indicating or implying that the Tiao Yu Tai Islands belong to Taiwan.

But it was not until the latter part of the 19th century that there was a quick succession of events bearing upon the territorial status of the Ryukyu kingdom and the ownership of the Tiao Yu Tai Islands. In 1872, Japan dethroned the king of Ryukyu, reducing him to the status of a feudal lord, and finally in 1879 she annexed the former kingdom as the Prefecture of Okinawa. Thereafter, Japanese interest in the Tiao Yu Tai Islands was demonstrated in a series of calculated measures. In 1885, the Prefectural government of Okinawa sought the approval of the central government to place Tiao Yu Tao and two other islets under its jurisdiction. Upon consultation with the Foreign Ministry, the Home Ministry advised postponement of the matter, since the islets were situated close to China where rumors of the Japanese occupation of Chinese islands in the vicinity of Taiwan were circulating. Erection of boundary markers would, it was felt, arouse China's suspicion.<sup>(79)</sup> Okinawa sought similar approval from Tokyo for the second time in 1890, and for the third time in 1893, but in vain. It was not until January 1895 that the Japanese Cabinet granted approval to Okinawa with respect to two of the islets. This was the first of two municipal measures to incorporate the Tiao Yu Tai Islands in Japanese territory, the other being the Imperial Ordinance of April 1896, based on a cabinet decision. It was in 1895, of course, that the Sino-Japanese War ended, in Japan's favor. By the peace treaty of Shimonoseki, signed in April 1895, China ceded to Japan Taiwan together with all the islands appertaining or belonging to it (Art. 2, Para. b). Thus, the fall of the Ryukyu Islands and Taiwan into Japanese hands ended the possibility of a territorial dispute over the Tiao Yu Tai Islands until there was another fundamental change of circumstances.

Exactly half a century later such a change took place, with the end of the Second World War and the defeat of Japan in 1945. Upon surrender to the Allies, Japan accepted the following condition in the Cairo Declaration of 1943: "...all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China." On October 26, 1945, China declared Taiwan to be her 35th province. The return of Taiwan to China was formally confirmed in the San Francisco Peace Treaty of 1951 signed between Japan and the Allies (other than China and Russia) and in the Taipei Peace Treaty of 1952 signed between Japan and the Republic of China.<sup>(80)</sup> As for the Ryukyu Islands, which were surrendered

to the 10th United States Army on September 7, 1945, and had since been under military government, a trusteeship system under U.S. control was provided for in Article 3 of the San Francisco Treaty:

Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands...) ...Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters. (emphasis added)

The Tiao Yu Tai Islands were included in the areas under United States administration from the beginning. Finally, on June 17, 1971, a treaty was signed in Tokyo between Japan and the United States, whereby Okinawa is to be restored to Japan.<sup>(81)</sup>

The beginning of the controversy may now be traced briefly against this background. On July 12, 1970, Taiwan and the Gulf Oil Company signed a contract for the exploration and exploitation of the oil resources in a specified area of the sea northeast of Taiwan (T-11, map no. 5), which included the entire Tiao Yu Tai Islands area. Almost immediately, on July 18, 1970, Japan contested this action by Taiwan on the ground that the Islands belonged to the Ryukyus and therefore to Japan. Thus began the controversy over the ownership of the Tiao Yu Tai Islands as well as over the continental shelf boundary between Japan and Taiwan. From the beginning, what was at stake was access to the oil resources which are thought to underlie adjacent areas of the East China Sea continental shelf, but legally the issue of the shelf boundary was dependent on the territorial status of the Islands. Settlement of the former would hardly be possible, unless the latter was settled first. This meant that Japan was involved in territorial problems with all her neighbors across the sea: problems over the four northern islands northeast of Hokkaido with Russia; over Tokdo (Takeshima) in the Sea of Japan with Korea<sup>(82)</sup>; over the Tiao Yu Tai Islands in the East China Sea with China; and over Okinawa with the United States.

Territorial disputes being what they are, especially between parties with an unforgotten history of acrimony, the Tiao Yu Tai controversy almost immediately escalated in a serious political issue, touching off the nationalist sentiments of both peoples against each other. Strongly operative in the back of their mind was of course the realization that it was by no means so much over the almost useless piece of territory itself as over what could be derived from the adjacent shelf by virtue of its possession. Each of them made exhaustive efforts to defend its position by means of legends, facts and even fabrications, which were abundantly available from its archives, libraries and even from living witnesses, and in so doing, made lavish use of diplomacy, scholarship and journalism. Each side insisted that there was no point at all in arguing over the ownership of what indisputably belonged to it. The confrontation continued to be tense, as other governments

began to get themselves involved directly or indirectly. On September 10, 1970, the Ryukyu government came to the aid of Japan, by claiming jurisdiction over the Islands as well as over the oil deposits around it. It even alleged, to the indignation of the Chinese, that the Islands were discovered by a Japanese, Tatsushiro Koga, in 1884. As the administrator of the Ryukyu Islands, the United States was also required to clarify its stand on the issue. On September 10, 1970, the State Department made it clear that the term "Nansei Shoto" as used in the San Francisco Peace Treaty (Art. 3) "was intended to include the Senkaku Islands" and that any conflicting claims "would be a matter for resolution by the parties concerned." (83) By December 4, 1970, when Peking came out with a strong claim to the ownership of the Islands, the controversy had finally come to involve five governments. It is also of interest to note that the argument has spread to the major academic and metropolitan centers of North America and, to a lesser extent, elsewhere, where a great many people of Chinese decent have strongly demonstrated their support of the Chinese claims against Japan. In the United States alone, the number of action committees devoted to this cause has exceeded 100 in 36 states. (34)

## (2) Points of Argument

Several points of argument between China and Japan have emerged to date.

### (a) The Chinese Argument (35)

Geographically, the Tiao Yu Tai Islands are situated on the edge of the East China Sea continental shelf which is contiguous to the Chinese mainland and Taiwan, whereas, on the south, they border the Okinawa Trough which plunges to over 2,000 meters. The Islands are therefore "continental," appertaining to Taiwan, unlike the Ryukyus which are "oceanic."

From the viewpoint of usage, the fishing grounds around the Islands have been regular haunts of Chinese fishermen, who used the islands as storm shelters as well. On the other hand, the currents and winds in the area throughout the year make it always difficult to sail to the Islands from the Ryukyus. This is how the Tiao Yu Tai Islands were discovered, and have been used almost exclusively by the Chinese. In 1940 when both Taiwan and the Ryukyus were under Japanese rule, a controversy arose between the fishermen of these two areas over the fishing rights around the Tiao Yu Tai Islands. This question of fishing rights was finally decided in favor of Taiwan by a Tokyo court in 1941, which is a proof that the Japanese themselves recognized that the Islands belonged to Taiwan.

Historically, reference to the Islands is found in a number of Chinese writings from as far back as the early 15th century. In some of these writings the boundary of the Ryukyu Islands is specified, showing that the Tiao Yu Tai Islands did not



constitute part of the Ryukyus. There are also a Ryukyu record of 1708 and two Japanese maps of 1783 and 1785 in which similar references are found. This means that the Islands were not discovered by the Japanese in 1884, as was alleged by the Ryukyu government in its statement of September 10, 1970.

From the treaty point of view, when Taiwan and all the islands appertaining or belonging to it were ceded to Japan in 1895 as a result of China's defeat in the Sino-Japanese War of 1894-95, the Tiao Yu Tai Islands were undoubtedly included in that part of the Chinese territory so ceded. In fear of possible friction with China, the central government of Japan had had to ignore three requests by the Okinawa Prefecture - in 1885, 1890 and 1893 - to incorporate part of the Islands into Japanese territory. Atlases published prior to the cession, therefore, identified the individual islets of the group by their Chinese names. In 1945, when Japan surrendered to the Allies, she accepted the terms as set forth in the Cairo and Potsdam Declarations of 1943 and 1945 respectively, regarding the return of the Chinese territories including the Tiao Yu Tai Islands earlier ceded to her. This was reconfirmed in the San Francisco Peace Treaty of 1951 between Japan and the Allies, and in the Taipei Peace Treaty of 1952 between Japan and Taiwan.

(b) The Japanese Argument (36)

Firstly, the ownership of the Tiao Yu Tai Islands had not been established by China, or any other state for that matter, up to 1894. The casual references to some of the islands in Chinese writings from the early 15th century cannot be taken as evidence of China's territorial right to them, since they merely specified, sometimes indirectly, the boundary of the Ryukyu Islands, not that of China, nor the territorial status of the islands situated between China and the Ryukyu Islands. These were only mentioned in the log-books, and subsequently in other records, because they happened to be situated en route to and from China. There is no reason, therefore, to regard as Chinese all the islands that were not specifically designated otherwise in the records. It was not until 1895, when the Japanese Cabinet decided to incorporate part of Tiao Yu Tai Islands into Japanese territory under the jurisdiction of the Prefecture of Okinawa, that the ownership of the Islands was first established.

Secondly, when the Ryukyu Islands were placed under the United States military administration at the end of the Second World War in 1945 and subsequently under U.S.

trusteeship in accordance with the San Francisco Peace Treaty of 1951, the Tiao Yu Tai Islands were always included in the Ryukyu Islands. Furthermore, the Okinawa Reversion Treaty signed between Japan and the United States in June 1971, scheduled to come into force on May 15, 1972, also included the Islands in the areas to be restored. Under this treaty Japan resumes "full" - instead of the current "residual" - sovereignty over the Islands. The concept of "residual" sovereignty over the Ryukyu Islands has always implied that the ownership of the Tiao Yu Tai Islands ultimately rests with Japan.

Among these various points advanced by Japan and Taiwan, some do not merit serious legal consideration. For instance, Taiwan's argument based on geography and physical usage alone does not "cut much ice" as the basis of ownership rights. Japan's second argument also appears to be open to question. The fact that the United States has included the Tiao Yu Tai Islands in the Ryukyu Islands cannot be taken to have created any new legal grounds relative to the ownership of the Islands. Since there was no specific reference to the Tiao Yu Tai Islands in the Shimonoseki Treaty, the Declarations of Cairo and Potsdam, the San Francisco Peace Treaty or the Taipei Peace Treaty, it would be more reasonable to regard their inclusion by the United States in the Ryukyu Islands as a necessary administrative expedient which by itself does not affect the issue of their territorial status between China and Japan. In this regard, the official view of the State Department is unequivocal.

The United States believes that a return of administrative rights over those islands to Japan, from which the rights were received, can in no way prejudice any underlying claims. The United States cannot add to the legal rights of Japan possessed before it transferred administration of the islands to us, nor can the United States, by giving back what it received, diminish the rights of other claimants. The United States has made no claim to the Senkaku Islands and considers that any conflicting claims to the islands are a matter for resolution by the parties concerned. (87)

It is of interest to note that the neutral attitude of the United States was criticized by China for being too unneutral and by Japan for being too neutral. (88)

### (3) Recapitulation

From the foregoing, it is clear that the arguments of both parties are reduced to the crucial question whether or not the Tiao Yu Tai Islands were ceded to Japan in 1895 together with Taiwan and "all the islands appertaining or belonging" to it. In the absence of a precise reference to the Islands in the Shimonoseki Treaty, the term "all the islands appertaining or belonging"

to Taiwan is ambiguous enough for each party to interpret favorably to its own interests. Ultimately, the whole controversy hinges on the question whether the Islands had been open to possession before 1895.

(a) The discovery of the Islands

In an early stage of the controversy, it was alleged rather strongly by Japan that the Islands were first discovered by a Japanese explorer Tatsushiro Koga in 1884. This was included as a "fact" in the Ryukyu government's statement of September 10, 1971, and listed as one of the three grounds of her claim to the Islands.<sup>(89)</sup> Apart from the evidence provided in the early Chinese records and other references, it would be highly improbable that a group of islets situated where they are could have remained unnoticed both by China and Japan up to 1884. This allegation appears to have now faded away even in Japan.

(b) The Tokyo court decision of 1941

Taiwan insists that, in 1940, when Taiwan and the Ryukyu Islands were both under Japanese rule, the fishermen of these two areas argued over the fishing rights around the Islands and that, after a year-long investigation, the case was decided in favor of Taiwan by a Tokyo court in 1941. This incident has been intensely exploited by Taiwan as a proof that Japan herself regarded the Islands as part of Taiwan, not of the Ryukyu Islands. This decision may be employed in support of China's claim against Japan, though the force of this argument depends upon the ground of judgment given. Japan has made little effort so far either to deny or to confirm the fact that such a ruling was made. Taiwan has neither published any documentary evidence of it nor identified its source, but has simply relied on the strength of testimony rendered by a living witness, who is reported to have submitted the evidence to the Chinese government. In this connection, a remark of the Taiwan Foreign Ministry may be noted with interest, though it does not specifically refer to this point: "Making public at this stage all the preparations of the government for future talks is feared to be detrimental to our interest, even though we have sufficient grounds to argue against (the Japanese claim)."<sup>(90)</sup>

(c) Maps and publications

Each party has produced a number of "documentary evidences" after what appears to have been an intensive search of its own archives and libraries as well as those of others. Among the sundry items of evidence are some foreign maps by contemporary cartographers. But it is little short of

"catching at a straw" for either party to attempt to assign any evidentiary value to third party cartography based on information which originates from the parties in dispute. Generally, a map is not prescriptive but only descriptive of what it is based on, and, technical considerations apart, this alone would disqualify derivative third party maps from having an important evidentiary role in a legal argument of this nature, except in the complete absence of primary evidence. Neither party has been successful in the search for persuasive cartographic evidence, and it seems futile to pretend otherwise, as both are earnestly doing.

A similar search is being made by each party for official publications put out by the other party which might contain references to the boundary between Taiwan and the Ryukyu Islands. References to this boundary were usually made in passing for other purposes than discussion of a boundary problem as such. They tend, however, to have a more substantial cumulative effect on the issue than cartographic works, for the obvious reason that they are likely to be more original than maps and, more important, because they are in the name of governmental authorities at various levels. In such publications of the post-war period, Taiwan does not seem to have fared particularly well, compared with Japan, though a fair comparison would have to be based on an exhaustive search of materials, if this is possible.<sup>(91)</sup> On balance, however, the inconsistencies that are found in publications would not decisively counter the effect of such more substantial evidences of the other party as may be derived from bilateral or multilateral arrangements concerned.

(d) Historical records

Both in Japan and Taiwan, there have been fussy attempts in scholarship and journalism to interpret the historical reports of 1534, 1559, 1562 and 1708 which contain fairly specific references to the boundary between China and the Ryukyu Islands. To be precise, however, they did not specify the boundary as such between China and the Ryukyu Islands. They merely identified the major islets within the Tiao Yu Tai group, as they were spotted en route to the Ryukyu Islands from China, and indicated the points at which the Ryukyu Islands began. In other words, there was no express indication, except in the record of 1559, that the Tiao Yu Tai Islands belonged to China. This is exactly where Japan and Taiwan differ fundamentally in their interpretation of the old records. As noted above, Japan insists that the casual references to the islets in the log-books cannot be taken to have implied

their territorial status in favor of China. The exclusion of the islets from the Ryukyu Islands in the two Japanese maps of 1783 and 1785 is also explained by Japan on similar ground: that is, the cartographers relied solely on the above Chinese and Ryukyu writings. This argument of Japan would appear to China to be an attempt to apply modern international law to what happened in pre-Grotian days. In all fairness, it would be more proper to interpret the old records in the context of their times, when there was a relationship of vassalage between China and the Ryukyu kingdom, instead of weighing them against the rules of modern international law relating to the acquisition of territory, since "a distinction must be made between the creation of rights and the exercise of rights." (92) It should also be said to be doubtful whether, under the circumstances of the time, China - or any other state for that matter - was required to make an explicit claim, in the absence of any possibility of dispute, in order to insure her ownership of insignificant outlying islets which were entirely useless except as navigational guides. In the context of the times, therefore, the specific description of the Ryukyu boundary as given in the old writings and maps does provide evidentiary support for the argument that the islets were neither res nullius nor res communis. Regarding this point, a relevant passage from the Island of Palmas Case Award may be quoted:

It is not necessary that the display of sovereignty should be established as having begun at a precise epoch; it suffices that it had existed at the critical period preceding the year 1898. It is quite natural that the establishment of sovereignty may be the outcome of a slow evolution, of a progressive intensification of State control. (93)

(e) The Tiao Yu Tai Islands in 1895

As mentioned above, the main argument in the controversy is whether or not the Islands were ceded to Japan in 1895. Three points may be made. First, it would not be fair to ignore the implications of the old writings and cartographic works with respect to the territorial status of the Islands of the time. Second, the Japanese claim was the direct result of Japanese victory in the Sino-Japanese War. As noted above, Japan hesitated to make this claim for ten years previously, in fear of possible friction with China, despite repeated requests by the Okinawa Prefecture. This hesitation only ended in the eve of China's defeat in the War: the Japanese Cabinet's decision for the incorporation was made in January 1895, by which time her victory was beyond doubt; the War

ended in March; and the Shimonoseki Treaty was signed in April 1895. It is unlikely that the imminent defeat of China and the Japanese Cabinet decision were entirely unrelated. Third, private ownership of part of the Islands has been claimed by reference to a document issued in 1893 by the former Imperial court of the Ching dynasty, as related below in the following section. These three points together militate against the argument that the Islands remained open to possession up to 1895.

In brief, it seems necessary to conclude that the Tiao Yu Tai Islands were not open to acquisition in 1895 and that Japan would not have purported to make such an acquisition but for the circumstances of war. Similarly, it seems that the Japanese acquisition would have been contested by China but for the same circumstances. It is precisely at this point that both parties scatter legends at large. On the Chinese side, the absence of precise reference to the Islands in the Shimonoseki Treaty would be explained on the ground of implied inclusion in "all the islands appertaining or belonging to the said island" of Taiwan which were ceded and later restored; on the Japanese side, it would be explained that the Islands were acquired by Japan prior to the signing of the Treaty. This raises the further question why China remained silent on the issue after the end of the Second World War, when there were several occasions at which she could have sought the settlement of a long standing problem. There does not appear to have been a contest of claims specifically on the ownership of the Tiao Yu Tai Islands. With regard to this silence, the Foreign Ministry of Taiwan explained at a Li Fa Yuen (Legislative Branch) debate that no protest was made, because the presence of the United States military forces in the area was not only deemed necessary for regional security, but also was considered irrelevant to the territorial status of the Ryukyu Islands with the United States. According to the above source, numerous exchanges were made with the latter after 1951 when, in compliance with the San Francisco Peace Treaty with Japan, the Ryukyu Islands were placed under the United States trusteeship, but were at the same time subjected to the so-called "residual sovereignty" of Japan, based on the hitherto unknown formula invented by John Foster Dulles. (94)

(f) Private ownership

Ownership of part of the Tiao Yu Tai Islands has been claimed by a United States citizen of Chinese decent, who is in possession of the Imperial Edict issued in

1893 by Empress Dowager Tsu Shih of the former Ching dynasty, whereby the three major islets of the Tiao Yu Tai Islands were granted to one of her subjects. On the authenticity of the Edict, it may be said that, in a sense, the controversy has assumed a dramatic aspect. The Edict deserves quotation here:

Imperial Edict of Empress Dowager Tsu Shih on the 10th month of the 19th year of Emperor Kuang Hsu, 1893

The medicinal pills submitted by Sheng Hsuan Huai....have proved to be very effective. The herbs used in making the pills are said to have been collected from the small island of Tiao Yu Tai, beyond the seas of Taiwan. Being made of ingredients from the sea, the prescription is more effective than that available in the Chinese mainland. It has come to my knowledge that the said official's family has for generations maintained pharmacies offering free treatment and herbs to destitute patients. This is most commendable. The three small islands of Tiao Yu Tai, Huang Wei Yu, Chih Yu are hereby ordered to be awarded to Shen Hsuan Hua as his property for the purpose of collecting medicinal herbs. May the great universal benevolence of the Imperial Dowager Empress and of the Emperor be deeply appreciated. (95)

If this document issued in 1893 by the Empress Dowager of China is accepted as evidence that the major part of the Tiao Yu Tai Islands had been designated as private property under Chinese law, it represents a legal challenge to the Imperial Ordinance of Japan issued in 1896 based on the Cabinet decision of the previous year, since a private appropriation could not be effected if the land were not part of the granter's territorial jurisdiction. It now remains to be seen how this extraordinary document is going to be evaluated against the background of so many changes with respect to the territorial status of the East China Sea islands, large and small.

In summary, the controversy over the ownership of the Tiao Yu Tai Islands has become a matter of history, law and politics, and currently involves as many as five governments - two on each side and a neutral third. Each party professes to be the only lawful owner of the Islands. There is no prospect of a settlement by agreement. Nor is it likely for the parties to seek international arbitration or litigation for the settlement of this issue. There are three reasons for holding this pessimistic view. First, due to history and culture, the two newly emerged world powers of China and Japan would lose face, much more painfully than other major nations of the world, from an arbitration or litigation based on a system of law that is intrinsically foreign to them. They did not take part in the formative process of

modern international law, which used to be imposed on them more often than accepted by them, especially when it had to do with territorial issues. Few territorial problems involving China or Japan have ever been settled by means other than force or duress. As a result, international law has not yet achieved a sufficiently respectable reputation in Chinese and Japanese eyes. (96) Second, there still exist between the two parties painfully acrimonious memories, which will not be easily erased. This is one of the non-legal factors which would overshadow any efforts to settle the issue as a legal controversy. As long as the legal aspect of the issue is colored by dark political overtones, the parties will be reluctant to leave the matter in the hands of a third party or organization to settle it as a legal issue for them. Third, the controversy involves the prospect of a particularly important resource, without which both of them would feel insecure as major powers. Paradoxically, the issue would have to be less important than it is, in order to be left to third party settlement. An offer to seek international arbitration or litigation would probably be made by either party only to "intimidate" the other and to "impress" the rest of the world. Neither is likely to call the other's bluff.

In brief, the controversy is essentially a political one that is being argued in the more polite language of international law or diplomacy. No territorial issue between East Asian states has ever been settled in this way, a striking example being the Tokdo dispute between Japan and Korea. To become negotiable, the issue would have to be modified by some drastic or dramatic event. Apart from this, two current developments may help to improve the climate. The first is the scheduled reversion of Okinawa to Japan on May 15, 1972. The second is the prospect of other major oil deposits in various areas of the Yellow Sea and the East China Sea. The parties may then find themselves able to deal with the Tiao Yu Tai issue in a less intransigent manner.



### Conclusion

The wildcat competition for oil among the coastal states of the Yellow Sea and the East China Sea threatens to expose the Continental Shelf Convention to a test much harder than the one imposed on it by the North Sea Continental Shelf Cases. The problem of boundary delimitation here involves almost every conceivable difficulty which the Convention was intended to prevent or solve. In addition to the difference of physical factors, such as the presence of outlying islets and a trough whose legal status relative to the delimitation of continental shelf boundary defies precise definition, there exists among the coastal states here a greater distrust as well as a wider disparity in economic and technological capabilities. No doubt the countries of the Far East are delighted, in a sense, to have a major oil dispute on their hands, after a history of debilitating scarcity of local oil. But this recent trouble was the least expected when it arrived in the region, and therefore caught them totally unprepared for it. The extravagant claims which they improvised unilaterally had not been preceded by the slightest pretense to seek agreement on the boundaries between the parties concerned.

In modern times, however, the delimitation of a boundary anywhere, for any purpose, depends upon the willingness of the parties concerned to seek agreement. Consent is prerequisite to the delimitation of a bilateral or a multilateral boundary. In the case of a continental shelf boundary, willingness to seek agreement is simply compliance with the mandate of reason and justice, which requires no reinforcement with declarative provisions of positive law. Delimitation by agreement, as reconfirmed in Art. 6 of the Geneva Convention, is therefore the basic principle to be applied to the issue here, as it is anywhere else. Unfortunately, however, there has been - and is likely to be - much futile effort among the coastal states of the Yellow Sea and the East China Sea to develop elastic interpretations of this highly controversial provision, oftentimes amplifying its provisory part over its principle part.

With regard to the continental shelf boundary between China and Japan in the vicinity of the Tiao Yu Tai Islands, delimitation would have to be preceded by settlement of the issue of ownership of the Islands. Even if this issue were resolved in Japan's favor, there would be difficulty in deciding how far Japanese sovereign rights of exploration and exploitation should be deemed to extend, because of the Okinawa Trough. If the ownership issue were resolved in China's favor, on the other hand, the continental shelf of Japan in the area under controversy would be more likely to end where the sea-bed begins to plunge into the Trough off Kyushu.

Even at this stage of the dispute, the parties would be better advised to seek agreement. The importance of oil being what it is to each of them, the consequences of an aggravation of the dispute might be explosive, more serious than the loss of revenues which would necessarily result from the delay in exploitation. Foremost among the future problems that may be foreseen in the region are the probable disputes over the distribution of the oil

and over the pollution of the area which may arise from exploitation or transportation of the oil. Apparently, little thought will be given to any of these potential problems as long as the parties are preoccupied with staking claims to unrealized resources in disputed areas of the sea-bed.

### Footnotes

1. Sovereignty of the Sea, p. 18, Geographic Bulletin No. 3, revised ed., U.S. Dept. of State Publication No. 7849, Oct. 1970.

Unless otherwise indicated the geophysical and other data in Chapters I and II have been drawn from the following two publications by the United Nations Economic Commission for Asia and Far East, which have virtually prompted the "oil war" in the Far East: K.O. Emery and H. Niino: "Stratigraphy and Petroleum Prospects of the Korea Strait and the East China Sea," pp. 13 - 27, Technical Bulletin, Vol. 1, 1968; K.O. Emery et al: "Geological Structure and Some Water Characteristics of the East China Sea and the Yellow Sea," pp. 3 - 43, Technical Bulletin, Vol. 2, 1969.

2. Encyclopedia Britannica, p. 884, Vol. 23, 1970.
3. J.E. Fairchild: Collier's Encyclopedia, p. 691, Vol. 23, 1964.
4. M. Hoshino: "Shigen" (Resources) series, no. 6, Feb. 14, 1971, Asahi Shinbun (Japanese daily); cf. footnote 15 below.
5. Pp. 39 - 40, Technical Bulletin, Vol. 2, 1969 (footnote 1 above).
6. The reaction of China in this regard is given in Chapter VI.
7. L.B. Johnson: at commissioning of "Oceanographer," July 13, 1966.
8. Dong-A Ilbo (Korean daily), May 25, 1970.
9. The Economist (July 31, 1971) gives a description of what might emerge as a second phase.
10. Dong-A Ilbo, leader, Aug. 27, 1971.
11. Concession Contracts in Korea

Block No.	Company	Date of Signature
2, 4	Gulf	Apr. 15, 1969
3, 6	Shell	Jan. 28, 1970
1, 5	Texaco	Feb. 27, 1970
7	Phillips	Sept. 24, 1970

12. The English translation of this law and its enactments may be found in a booklet entitled: The Law for the Development of Submarine Mineral Resources, Ministry of Commerce-Industry, Seoul, 1971.

13. Further contacts were made by Japan on June 19 and August 20, 1970, when she proposed to hold talks to determine the continental shelf boundaries with Korea.
14. An informative description is given by K.S. Yo, Shin Dong-A (Korean monthly), pp. 332 - 433, Dec. 1969.
15. Asahi Shinbun, Jan. 4, 1971; this is an introductory article to the 20 weekly-series on the problems of resources, beginning from the Jan. 10, 1971 issue. M. Shuichi: "Japan's Resources Policy at a Turning Point," pp. 281 - 287, Vol. XVIII, No. 3, July-Sept. 1971, Japan Quarterly.
16. Asahi Shinbun, Mar. 31, 1971; United Nations Statistical Yearbook, 1970.
17. Ministry of International Trade and Industry as quoted by Asahi Shinbun Mar. 18, 1971.
18. Asahi Shinbun, Feb. 4, 1971.
19. Asahi Shinbun, Mar. 18, 1971
20. Asahi Shinbun, Aug. 11, 12, 1971.
21. (1) K.E. Shaw: "International Status of the Singapore Strait and the Territorial Waters of the Republic of Singapore" (in Chinese and with maps), pp. 28 - 38, Vol. II (1968), Nanyang University Journal, Singapore.  
(2) K.E. Shaw: "The Juridical Status of the Malacca Straits and Its Relation to Indonesia and Malaysia" (with maps), pp. 284 - 320, Vol. III (1969), Nanyang University Journal, Singapore.  
(3) K.E. Shaw: "The Juridical Status of the Malacca Straits in International Law," pp. 34 - 47, Vol. 14 (1970), Japanese Annual of International Law, Tokyo.  
(4) K. Murakami: Nihon Boeino Koso (On Japan's Defense Policy), pp. 150, 204 - 218, Tokyo, 1970.  
(5) Asahi Shinbun: July 8, 1970; Aug. 6, 1970; May 9, 1971; Oct. 17, 1971.
22. K.E. Shaw: op. cit. p. 41.
23. Asahi Shinbun, May 9, 1971.
24. The Chinese text may be found in Sing Tao Ri Bao (Chinese Daily, Singapore) Nov. 17, 1971; a brief comment in Dong-A Ilbo, Nov. 18, 1971; for further developments, see the New York Times, March 13, 1972; and for detailed reports with illustrations, see the feature article by Yamaoka et al., at pp. 40 - 50, Sekai Shuho (Weekly World, published by the Jiji Press in Japanese in Tokyo), Dec. 14, 1971; and J.C. Chen, "The Malacca Straits and Japan: the Controversy is Bound to Aggravate Itself," pp. 16 - 26, Sekai Shuho, Mar. 28, 1972.

25. The Chinese text may be found in Sing Tao Ri Bao, Nov. 27, 1971; and a brief report in the New York Times, Nov. 28, 1971.
26. One of the latest attempts to define the legal character of straits may be seen in the United States proposal submitted to the United Nations Sea-Bed Committee, Geneva, Aug. 3, 1971. Its Art. II reads:
  1. In straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State, all ships and aircraft in transit shall enjoy the same freedom of navigation and overflight, for the purpose of transit through and over such straits, as they have on the high seas. Coastal States may designate corridors suitable for transit by all ships and aircraft through and over such straits. In the case of straits where particular channels of navigation are customarily employed by ships in transit, the corridors, so far as ships are concerned, shall include such channels.
  2. The provisions of this Article shall not affect conventions or other international agreements already in force relating to particular straits.

The text and the statement upon submission by J.R. Stevenson may be found in International Legal Materials, pp. 1013 - 1020, Vol. 10, No. 5, Sept. 1971.

27. Asahi Shinbun, Aug. 6, 1970.
28. It is of interest to note the reaction of China. Shortly after the release of Japan's Defence White Paper on October 20, 1970, China commented:

"Didn't the Japanese reactionaries claim that the Strait of Malacca and the whole Southeast Asia are Japan's 'lifeline'? This is one and the same with the outcry of the old-line Japanese militarism that 'the continent is Japan's 'lifeline'..." (Ren Min Ri Bao, Nov. 1, 1970; Peking Review, No. 45, Nov. 6, 1970.)

With regard to Malaysia's extension of her territorial sea at this particular time, it is believed that she aimed at dividing the continental shelf of the Malacca Straits equally with Indonesia by first establishing her straight baselines in the same manner as Indonesia (map no. 12). Cf. International Boundaries Study, series A, Continental Shelf Boundary, No. 1, Indonesia-Malaysia, issued by the Geographer, U.S. Dept. of State, Jan. 21, 1970. For subsequent developments on the continental shelf boundaries of Indonesia, Malaysia and Thailand in the northern part of the Malacca Straits, see, Chen, p. 20, - footnote 24, above.

29. On Oct. 12, 1971, a 372,000-ton Japanese tanker (the Nisseki Maru), the biggest in the world to date, had to make a detour by way of the Lombok Strait at her virgin trip from the Persian Gulf. On her way to the Middle East, she could pass through the Malacca Straits (Mainichi Shinbun - Japanese daily, Oct. 17, 1971.)
30. Asahi Shinbun, Aug. 6, 1970.
31. Asahi Shinbun, July 8, 1971.
32. The Ministry of International Trade and Industry has set up a target of 30% self-development by 1985, by which is meant developing this much of the demand with domestic capital (Asahi Shinbun, Feb. 4, 1971). The infeasibility of this plan has logically been indicated by the Ministry of Finance on the ground that, in order to meet the target, half the new finds throughout the world would have to be done by Japan alone, that the price of oil thus developed, if ever possible, would be higher than imported oil, and that the ratio of 30% is entirely arbitrary and meaningless in meeting any conceivable contingents (Asahi Shinbun, Sept. 11, 1971.)
33. K. Takenaka: Kaiyo Kaihatsu Sangyo (Ocean Development Industry), pp. 302 - 307, Tokyo, 1970.
34. The report of the second survey conducted in June, 1970, has been reproduced at pp. 1 - 84, appendix, Okinawa (quarterly in Japanese), No. 56, Mar. 25, 1971, Tokyo.
35. Okinawa, p. 39, No. 56, Mar. 25, 1971, Tokyo. This does not necessarily mean that there were as many as 24,864 individual applicants. (cf. footnote 36 below).
36. The Mining Law (Art. 14, Para. 3) stipulates that applications for mining rights have to be prepared separately for every unit of a million tsubos (about 833 acres). This means that a mining block of 50,000 sq. kms., the usual size to be found in the Yellow Sea and the East China Sea, would consist of over 15,000 such units, and therefore require as many applications. Moreover, each application requires a 3,000 revenue stamp, which is not usually available at ordinary post offices. As applications are considered by the government on a first-come-first-served basis (Art. 27, Para. 1), they have to be prepared as quickly as possible and without rival applicants knowing of it at all. Thus, a completed batch of applications submitted in April, 1969, by one of the Japanese oil majors, the Nihon Sekyu Kaihatsu, for a block of 50,300 sq. kms., is said to have comprised as many as 100,000 pieces of papers altogether - let alone the cost.

37. Applications for areas outside the blocks under dispute were approved by the Prefectural Governments of Hiroshima and Fukuoka in November 1970, (Yomiuri Shinbun - Japanese daily, Nov. 21, 22, 24, 25, 1970.)
38. More on this in Chap. V, Para. 2 infra; Yomiuri Shinbun, Oct. 24, 1970; Nov. 6, 1970; Japan Times (English weekly, Tokyo), Oct. 9, 1971.
39. Okinawa, p. 39, No. 56, Mar. 25, 1971, Tokyo. There was a lapse of only 10 days between the first and the third batches of applications submitted.
40. See VII-C below.
41. United Nations Statistical Yearbook, 1970. Other figures in this section have been quoted from W.P. Chang, "The Energy Industry of Taiwan," pp. 1 - 14, Vol. 22, No. 2, June, 1971, The Bank of Taiwan Quarterly Report (in Chinese), Taipei.
42. Concession Contracts

Block No.	Company	Date of Signature
I	Amoco	July 11, 1970
II	Gulf	July 12, 1970
III	Oceanic Exploration	August 13, 1970
IV	Clinton	Sept. 24, 1970

(Chung Yang Ri Bao - Chinese Daily, Taipei, Aug. 14, 1970; Sept. 25, 1970)

43. Li Fa Yuen Kung Bao (the minute of debate, the Legislative Branch), pp. 1 - 14, Vol. 59, No. 64, Aug. 22, 1970.
44. Chosun Ilbo (Korean daily), Sept. 17, 1970 and Dec. 5, 1970; Dong-A Ilbo, Sept. 17, 1970 and Oct. 8, 1970; Kyung Hang Shinmun (Korean daily), Oct. 12, 1970. It is of interest to note in this regard that one of the foreign oil companies holding a concession contract over a Korean block overlapping with a Japanese block is reported to have surprised the Japanese government by proposing to develop his concession area jointly. The surprise was prompted by the fact that, from the

standpoint of Japan, the proposed area belonged to her and that its development would therefore have to be arranged in compliance with the Japanese law regulating mining (Mainichi Shinbun, Oct. 15, 1971).

45. Asahi Shinbun, Sept. 15, 1970.
46. Yomiuri Shinbun, Nov. 3, 1970; Chung Yang Ri Bao (Taipei), Mar. 6, 1971.
47. The summary minute of meetings may be found in Chung Yang Ri Bao (Taipei), Apr. 10, 1970.
48. Cf. Chap. VI, Para. 2 infra.
49. Cf. Chap VI, last Para.
50. C. Fu: Kuan Yu Wo Kuo Di Ling Hai Wen Ti (Territorial Sea Problem of Our Country), p. 2, Peking, 1959.

Different figures are also given. For instance, the U.S. State Dept. Geographic Bulletin (footnote 1 supra) gives at p. 19 China's coastline exclusive of detailed irregularities as 3,492 nautical miles, while another source (p. 10, Shin Chu Ko Ku Nen Kan, New China Yearbook, 1970, Tokyo) records it as 8,000 nautical miles or 13,000 nautical miles if islands are included.

51. The Chinese text of the declaration may be found in Ren Min Ri Bao (People's daily, Peking, Sept. 5, 1958) and its English version in Peking Review (p. 21, No. 28, Sept. 9, 1958) or in the New York Times (Sept. 5, 1958). The factors that were thought to have occasioned the declaration may be seen in T. Cheng, "Communist China and the Law of the Sea," American Journal of International Law, p. 47, Vol. 63, No. 1, Jan. 1969. Comments on it may be seen in C. Fu (footnote 50), T. Cheng (op. cit.), and T.Y. Liu at pp. 11 - 13, Peking Review, No. 29, Sept. 16, 1958.
52. This difficulty is encountered not only in statistics but also in other fields. For instance, the exact location of the oft-quoted Taching Oil Field seems to have been a matter of guess for quite some time. Relying on an Austrian traveller's report, a source from Taiwan (Ta Lu Wen Ti Chuan Ti Yen Chou, Specialised Study of Continent Problems, p. 11, No. 45, Nov. 5, 1969, Taipei) says that it is situated northwest of Harbin, 4-1/2 hours' distance, not near Chinchou as some Japanese sources suggested.

Another source gives the location in more detail with a map showing all the major oil and natural gas industrial centers as well as pipelines and other supply routes. According to it, the Taching Oil Field is situated in the southern Hei Lung Jiang Province, in central Manchuria, about 160 kilometers northwest of Harbin, near Sartu, 35 kilometers northwest of Anta, occupying a very large area, and large-scale production started in 1963 (C.S. Chen: p. 8, Petroleum Resources and Their Development in China, in Chinese with English abstract, Research Report No. 5, Geographical Research Center, Graduate School, Chinese University of Hong Kong, 1968).



For more about the Taching Oil Field, see Taching -- Chungkuo Kungyuewhade Jungchue Taolu (Taching -- the Royal Road to the Industrializations of China), the Kung Ren Press, Peking, 1966; and Taching: Red Banner on China's Industrial Front, Foreign Languages Press, Peking, 1972.

53. Edgar Snow as quoted in Asahi Shinbun (Apr. 11, 1971) in its six weekly series on his dialogue with Chou En-Lai. This is said to be one of the rare occasions at which some significant economic statistics of China were released.
54. Chung Gong Yen Chou (Study of Communist China, Monthly), p. 7, serial No. 51, Vol. 5, No. 3, 1971, Taipei.
55. Gen Dai Chu Ko Ku Ji Ten (Modern China Cyclopedia), p. 160, 1968, Tokyo.
56. The series of China's protests may be found in Ren Min Ri Bao, Nov. 20, 1970; Peking Review, No. 43, Nov. 27, 1970; Ren Min Ri Bao, Dec. 4, 1970; Peking Review, No. 50, Dec. 11, 1970; Ren Min Ri Bao, Dec. 29, 1970; Peking Review, No. 1, Jan. 1, 1971.
57. The Korean translation may be seen in Nankook Ilbo (Korean daily), Mar. 4, 1971.
58. New York Times, Apr. 10, 1971.
59. A/CONF.13/C.4/L.25/Rev. 1 and -/L.60
60. Capt. Kennedy (U.K.): P. 93; support by U.S. delegate at p. 95, Vol. VI, 1st Geneva Conf. Records.
61. S. Oda: "Boundary of the Continental Shelf," Japanese Annual of International Law, pp. 264 - 284, Vol. 12, 1968.
62. S. Oda: "Proposals for Revising the Convention on the Continental Shelf," Columbia Journal of Trans-national Law, p. 31, Vol. 7, No. 1, 1968.
63. Commission on Marine Science, Engineering and Resources: Marine Resources and Legal-Political Arrangements, Panel Report, Vol. III, p. 34, U.S. Government Printing Office, Washington, D.C., 1969.
64. Malta at the United Nations, March 18, 1969, A/AC. 138/11.
65. Commission to Study the Organization of Peace: The United Nations and the Bed of the Sea (II), p. 18, 2nd Report, New York, 1970.
66. (1) Bahrain and Saudi Arabia: International Boundary Study, Series A, Continental Shelf Boundary, No. 12, issued by the Geographer, U.S. Dept. of State, 1970;

- (2) Iran and Saudi Arabia: IBS, Series A, CSB, No. 24, 1970; R. Young: "Equitable Solutions for Offshore Boundaries: the 1968 Saudi-Arabia-Iran Agreement," American Journal of International Law, Vol. 64, No. 1, pp. 152 - 156, Jan. 1970;
- (3) Abu Dhabi and Qatar: IBS, Series A, CSB, No. 18, 1970;
- (4) Italy and Yugoslavia: IBS, Series A, CSB, No. 9, 1970;
- (5) Iran and Qatar: IBS, Series, CSB, No. 25, 1970;
- 67. ILC Yearbook, pp. 297 - 298, Vol. II, 1956.
- 68. IBS, Series A, CSB, No. 10, the North Sea, 1970.
- 69. (1) A/CONF.13/2, p. 15, 1st Geneva Conf. Records.  
 (2) For the agreement between Norway and Denmark in which the Norwegian Trough is also ignored in the Skagerrak, see p. 5, IBS, Series A, CSB, No. 10, the North Sea, 1970.
- 70. ECAFE Technical Bulletin, Vol. 2, pp. 35 - 36.
- 71. Paras. 23, 24, 53, 55, and 101-(1), ICJ Reports of Judgments, etc., North Sea Continental Shelf Cases, 1969.
- 72. A/CONF.13/38, 1st Geneva Conf. Records, Vol. II, p. 57. Japan's refusal to sign the Convention is apparently based on her dissatisfaction to Art. 1 on the definition of the continental shelf and to Art. 2 on the definition of the shelf resources. As Art. 2, Para. 4, regards certain bottom species as continental shelf resources, it was rightly thought by Japan, as she still does, that her sedentary fisheries, the North Pacific crab fisheries in particular, would be seriously affected. It was barely in June, 1968, that she ratified only two of the four Geneva Conventions on the Law of the Sea, namely, the Convention on the Territorial Sea and Contiguous Zone and the Convention on the High Seas, since obviously these two are thought to affect her interests not so much as the other two.
- 73. Tokai University Report (Aug. 20, 1970), p. 43, as reprinted in Okinawa, Vol. 56, March, 1971.
- 74. Survey Reports of Hydrographic Office, Japanese Navy, 1886, 1894; Hydrographic Department of Japan, 1908; both as reprinted in Okinawa, pp. 184 - 187, ibid.
- 75. The report is reprinted in Okinawa, p. 195, ibid. Even before 1900, Japanese hydrographers seem to have used the name "senkaku," but pronounced it "pinnacle" with this English sound transcribed beside it, in the fashion of the time to transcribe proper names of foreign origin (cf. p. 185, Okinawa, ibid.).

76. Shun Feng Hsiang Sung, 1403 (a navigation record of the early Ming dynasty, as quoted in "Chronicle of Events on Tiao Yu Tai Problem," ed. by H.D. Chu, p. 18, No. 40, April 1971, Dah Hsueh, "The Intellectual," Taipei). This early 15th century record is catalogued as D339/S92 in the U.S. Library of Congress, according to quotation in Okinawa Reversion Treaty at p. 151, Hearings before the Committee on Foreign Relations, United States Senate, 92nd Cong., 1st Sess., Ex.J.92-1, Oct. 27 - 29, 1971.
77. a. A list of the collections may be found at p. 73 - 75, Liu-chiu Di Li Je Lueh (Summary Geography of Ryukyu) by J.J. Fu et al., Local Geography Series, Ministry of Home Affairs, published in Shanghai, 1948.
- b. S.K. Jeng: Re Ben I Jien (A Report on Japan), 1559. This is the author's report of his trip to and three-year stay in Japan (1556-1559). In his navigation record, he describes the location of major islands en route and specifically mentions "Tiao Yu Tai belongs to Taiwan." Part of the text and other diagrams are reproduced in published monthly in Taipei), Oct., 1971.
- c. K. Chen: Shih Liu-chiu Lu (Report of a Mission to Ryukyu), 1534, catalogued as 9100.2822 in the Columbia University Library, according to quotation at p. 151, Senate Hearings, *ibid.* (footnote 76, above). The author names major islets of the Tiao Yu Tai group on his eastward voyage from China to Ryukyu and says: "...in the evening of May 11th, we saw Kumi-shan, which belongs to Ryukyu..." Kumi-shan is Kume Jima situated about 40 n. miles west of Okinawa and about 150 n. miles east of Tiao Yu Tao (Chinese text as quoted at p. 80, Ming Bao (quarterly, Hong Kong), No. 58, Oct. 1970).
- d. Y.L. Kou: Shih Liu-chiu (Mission to Kyukyu, 1562: "...on May 3rd of the leap year, we came to Chiwei, which borders with Ryukyu..." Chiwei or Sekibi in Japanese is at the east end of the Tiao Yu Tai Islands - map no. 6-b - (Chinese text as quoted at p. 80, Ming Bao, *ibid.*).
78. a. S.J. Ting: Ji Nan Kuang Yi, a collection of mariners' stories, 1708: "On a voyage from Fuchiu to Liu-chiu...came to Kumishan, which borders with Ryukyu." Cf. footnote 77-b, above; Chinese text as quoted at p. 80, Ming Bao, *ibid.*).
- b. Y. Asano: Map of Japan, 1783, as identified at p. 151, Senate Hearings, *ibid.* (footnote 76 above); according to the quotation in it, this map is catalogued as 2217.2, Lamont Library, Harvard University. The author is said to have used the same color for China and the Tiao Yu Tai group, as distinct from that used for Japan and Ryukyu.
- c. S. Hayashi: San Kuo Tung Lan Tu Shuo Liu-Chiu Pu Fen Tu Ryukyu Areas, Map of Three States, 1785, reprinted at p. 244, Okinawa, *ibid.* The author specifies all the islets that belonged to Ryukyu with the territorial status of the three major islets of the Tiao Yu Tai group unidentified.

79. Official documents with respect to this point reprinted at pp. 112 - 115, Okinawa, ibid.
80. The Taipei Peace Treaty (Art. 4): "It is recognized that all treaties, conventions and agreements concluded before December 9, 1941, between China and Japan have become null and void as a consequence of the war." Signed in Taipei, on April 28, 1952.
81. The reversion is scheduled to take place on May 15, 1972 (Jan. 8, 1972, The New York Times).
82. Cf. Footnote 94, below.
83. U.S. State Dept. Press Release, Sept. 10, 1970. Substantially identical opinions including one by Secretary Rogers, which were expressed subsequently, may be seen at pp. 11 and 91, Senate Hearings, ibid. (footnote 76, above). Japan's dissatisfaction on this "too neutral" attitude of the United States appears to have occasioned a diplomatic exchange from Tokyo to Washington, according to Japanese Foreign Minister K. Aichi testifying at the Lower House, the Japanese Diet, on Sept. 10, 1970 (testimony reprinted at pp. 122 - 130, Okinawa, ibid.).
84. Senate Hearings, p. 151, ibid. (footnote 76, above). Regarding the demonstration by the Chinese in the United States, cf. The New York Times, Apr. 12, 1971, and Senate Hearings, at p. 153, ibid.; J. Lee, "The Story of Tiao Yu Tai Movement," pp. 4 - 16, Bridge, Vol. 1, No. 3, Nov. - Dec. 1971; and for a full-page advertisement, The New York Times, May 23, 1971.
85. The argument of China has been advanced separately by Peking, Taiwan and the overseas Chinese interests, each with different characteristics.
  - a. The argument of Peking, which usually concerns the Tiao Yu Tai issue as well as the East China Sea resources, may be found in the following:

Ren Min Re Bao (People's Daily):  
December 4, 29, and 31, 1970; May 1 and 26, Dec. 13, 1971.

Peking Review:  
No. 50, pp. 15 - 16, Dec. 11, 1970.  
No. 1, p. 22, Jan. 1, 1971.  
No. 2, pp. 15 - 16, Jan. 8, 1971.  
No. 19, p. 14, May 7, 1971.  
No. 1, pp. 12 - 14, Jan. 7, 1972.  
No. 10, pp. 14 - 16, March 10, 1972.  
No. 13, pp. 17 - 18, March 31, 1972.

Incidentally, Peking's uncommonly enthusiastic support of the Latin American claims of 200 miles territorial sea limit seems to have started on November 20, 1970, marking China's resumption of interest in the affairs of the sea after a long silence since 1958 when she declared the limit of her territorial sea (cf. footnote 51). The November 20, 1970, issue of the People's Daily gives an exceptionally long article in addition to a leader on this point (cf. Peking Review, No. 48, pp. 8 - 10, Nov. 27, 1970). Other articles of lesser length may be found in People's Daily, June 28 and 30, 1971, and in Peking Review, No. 43, p. 13, Oct. 22, 1971.

It should be noted that the first official statement by Peking was made by the Foreign Ministry on Dec. 30, 1971 (Chinese text in People's Daily, Dec. 31, 1971; English text in Peking Review, No. 1, pp. 12 - 14, Jan. 7, 1972; cf. the New York Times, Jan. 2, 1972). The second official statement was made at the United Nations Sea-Bed Committee on March 3, 1972 (English text may also be found in Peking Review, No. 10, pp. 14 - 16, March 10, 1972), and some reference was also made on the ownership of the Tiao Yu Tai Islands in a letter sent to the Decolonization Committee by the Chinese delegation (the letter made public on March 9, 1972; cf. the New York Times, March 4, 11 and 13, 1972). For another speech at the Committee on March 24, 1972, see Peking Review, No. 13, pp. 17 - 18, March 31, 1972.

- b. The argument of Taiwan on the Tiao Yu Tai dispute is best summed up in the following:

Li Fa Yuen Kung Pao (Minute, Legislative Branch): issues of Sept. 26 and 30, Oct. 7 and 10, 1970; Tiao Yu Tai Lieh Yu Wen Ti Se Liao Huey Pien (Collection of Material on Tiao Yu Tai Problem), published by the 4th Dept., Kuomintang, Taipei, 1971; and H.D. Chu, Ming Bo, pp. 2 - 16, no. 75, March 1972 (based mainly on Japanese documents and maps).

- c. The argument advanced by overseas Chinese is best summed up in a paper prepared by the Delaware Tiao Yu Tai Committee as quoted in full length in Senate Hearings, at pp. 145 - 153, ibid. (footnote 76, above); Ming Bao, pp. 79 - 85, No. 58, Oct. 1970, pp. 17 - 31, No. 65, May 1971.
- d. Chronology of events on the dispute in general may be found at pp. 18 - 24, Dah Hsueh (footnote 76, above) and at pp. 250 - 255, Okinawa, ibid.

86. Okinawa, ibid., is a fairly good source book for comprehensive information and argument in behalf of Japan.

87. P. 91, Senate Hearings, ibid. (footnote 76, above).

88. On Japan's dissatisfaction, cf. footnote 83, above; on China's, p. 152, Senate Hearings, ibid. (footnote 76, above).
89. The other two points are the same as given at 2), (2), above.
90. J.H. Shen, Vice-Minister of Foreign Affairs, testifying at the Li Fa Yuen (Legislative Branch) on Sept. 25, 1970.
91. Liu-chiu Di Li Je Lueh (Summary Geography of Ryukyu) by J.J. Fu et al., Local Geography Series, Ministry of Home Affairs, published in Shanghai, 1949, includes the Tiao Yu Tai Islands in the Ryukyu Islands. Another striking example is the Statistical Abstract, 1969, the Government of the Republic of China, according to which the eastern boundary of the Taiwan Province is the east end of Mien Hua Yu (122° 06' 25" E.), which is one of the offshore islands of Taiwan far west of the Tiao Yu Tai group (pp. 4 and 26). On the other hand, some non-governmental publications show "ambitious" remarks. For instance, Chung Hua Min Kuo Nien Jien (Republic of China Yearbook) says that even "the entire Ryukyu Islands themselves consisting of some 80 islands were originally Chinese and are yet to be recovered from the United States trusteeship system." (p. 14, 1953 ed., and p. 23, 1967 ed.; it is presumed that other editions also have similar, if not identical, remarks). Examples of "careless" maps are also pointed out by the Li Fa Yuen of Taiwan (map 14, World Atlas, by J.L. Chang, 1965, referred to at p. 40, Li Fa Yuen Kung Bao, Sept. 30, 1970), and a secondary school textbook by the same author. (This was spotted by the Japanese Ministry of Education, cf. Yomiuri Shinbun, May 13, 1971.) This "error" in the 1970 edition of the national textbook was corrected in its 1971 edition. (Maps showing the original and the correction may be found at p. 33, Sekai Shuho - weekly world, March 28, 1972, Tokyo.) In this regard, it may be noted that most geography textbooks published in Taiwan in and before 1970 do not specify the national boundary in the Tiao Yu Tai area. In fact, the boundary between Taiwan and the Ryukyus - partially marked - gives the impression of excluding the Islands in question from Chinese territory.

It may also be noted with interest that Se Je Di Du Ji, an atlas published in Peking in November 1958 and another (Chung Hua Ren Min Kung Hua Kuo Fen Sheng Di Du - Atlas of China's Provinces) published in Peking in 1964, are said to have included the Tiao Yu Tai Islands in Japanese territory (p. 32, Sekai Shuho and p. 16, Ming Bao, footnote 85(b) above).

92. Reports of International Awards, p. 845, Vol. II, Island of Palmas Case, (pp. 829 - 871), United Nations, 1949.

It should be noted with interest that, even in Japan, strong opinions have been expressed in support of China's reliance on history by two political organizations, namely, the Nitchu Yuko Kyokai (China - Japan Friendship Association) and the Kokusai Doeki Sokushinkai (International Trade Promotion Association). Both very strongly insist that the plot

in Japan over the ownership of the Tiao Yu Tai Islands should be opposed (Mainichi Shinbun, March 16, 1972; Sekai Shuho, p. 31, *ibid.*; K. Inoue, Kokusai Boeki - international trade, Feb. 29, 1972, Tokyo; and Rekishu Gaku Kenkyu (Study of History), #381, Feb. 1972.

93. Reports of International Awards, p. 867, *ibid.* (footnote 92, above).
94. S.H. Shen: p. 34, *ibid.* (cf. footnote 90, above).
95. The English translation from p. 90, Senate Hearings, *ibid.* (footnote 76, above). Nowhere in the argument presented in behalf of China is this Edict referred to. From the correspondences to and from the U.S. State Dept. dated Sept. 28 and Oct. 20, 1971, respectively (the latter reprinted at p. 91, Senate Hearings, *ibid.*), it may be seen that the claim to the ownership based on this Edict was first made through the U.S. government and that it was later brought to the attention of the U.S. Senate at its hearings on the Okinawa Reversion Treaty on Oct. 27 - 29, 1971. It is not clear whether Peking, Taiwan and overseas Chinese interests had been aware of its existence but on purpose stayed silent on it.

The English translation of two other documents and the text of the claimant's correspondence to the U.S. State Dept. are quoted here from Senate Hearings, *ibid.* (pp. 89, 90, 89 respectively).

(A Sketch map of Tiao Yu Tai with an explanatory note)

Tiao Yu Tai, Huang Wei Yu and Chih Yu are three small islands located beyond Keelung, Taiwan. They stand out above in the middle of the ocean. They have never been inhabited and are the sheltering places of fishermen from the northern part of Taiwan. Though they belong to our family, they are only used for collecting medicinal herbs and are not developed. Toward the end of the Ching dynasty, based on a record written by the Honorable Li Ting Yuan, deputy to the Honorable Chao Chia Shan, our family sent someone to draw a map which was used to be kept in my study... Later all the books and manuscripts in my study were donated to the National Chao Tung University, formerly the Nan Yang College, which was founded by my father. The sketch map is in that collection.

Written by Sheng En I (courtesy name Che Cheng)

Translation of an excerpt from a letter of Sheng En I (courtesy name Che Cheng) to his daughter Sheng Yu Cheng dated 5th December the 36th year of the Republic of China, 1947.

There are three small islands beyond the seas of Taiwan, namely Tiao Yu Tai, Huang Wei Yu and Chih Yu. They are all barren and were mentioned in the writings of the Honorable Chao Wen Chia (courtesy name Chia Shan) who visited the Liu-chiu (Ryukyu) as

imperial envoy. Though uninhabited, the islands produce abundant medicinal herbs. When our family was at its zenith, we had Kuang Jen Tang pharmacies in Chefoo, Shanghai and Changshow offering free treatment and medicine. It was well known everywhere. The Empress Dowager awarded the three islands to your grandfather for the purpose of collecting herbs. The Imperial Edict has been kept in our family. The islands belong to us. We also have in our possession a map with an explanatory note. I am mailing these to you, hoping that you will find some way to visit the islands one day. But you must not go if the trip should be considered dangerous.

Claimant's letter to the U.S. Government

Dear Sir:

I have in my possession an Imperial Edict, a sketch map and two letters proving that the Islands of Tiao Yu Tai, Huang Wei Yu and Chih Yu were awarded to my family by Empress Dowager Tsu Hsi in 1893.

Since these islands are the properties of my family, the United States must not transfer them to Japan together with the Ryukyus. I submit herewith facsimiles of the original documents together with translations.

I shall be grateful if the Department of State will take appropriate measures to inform all parties concerned of the legal status of these islands.

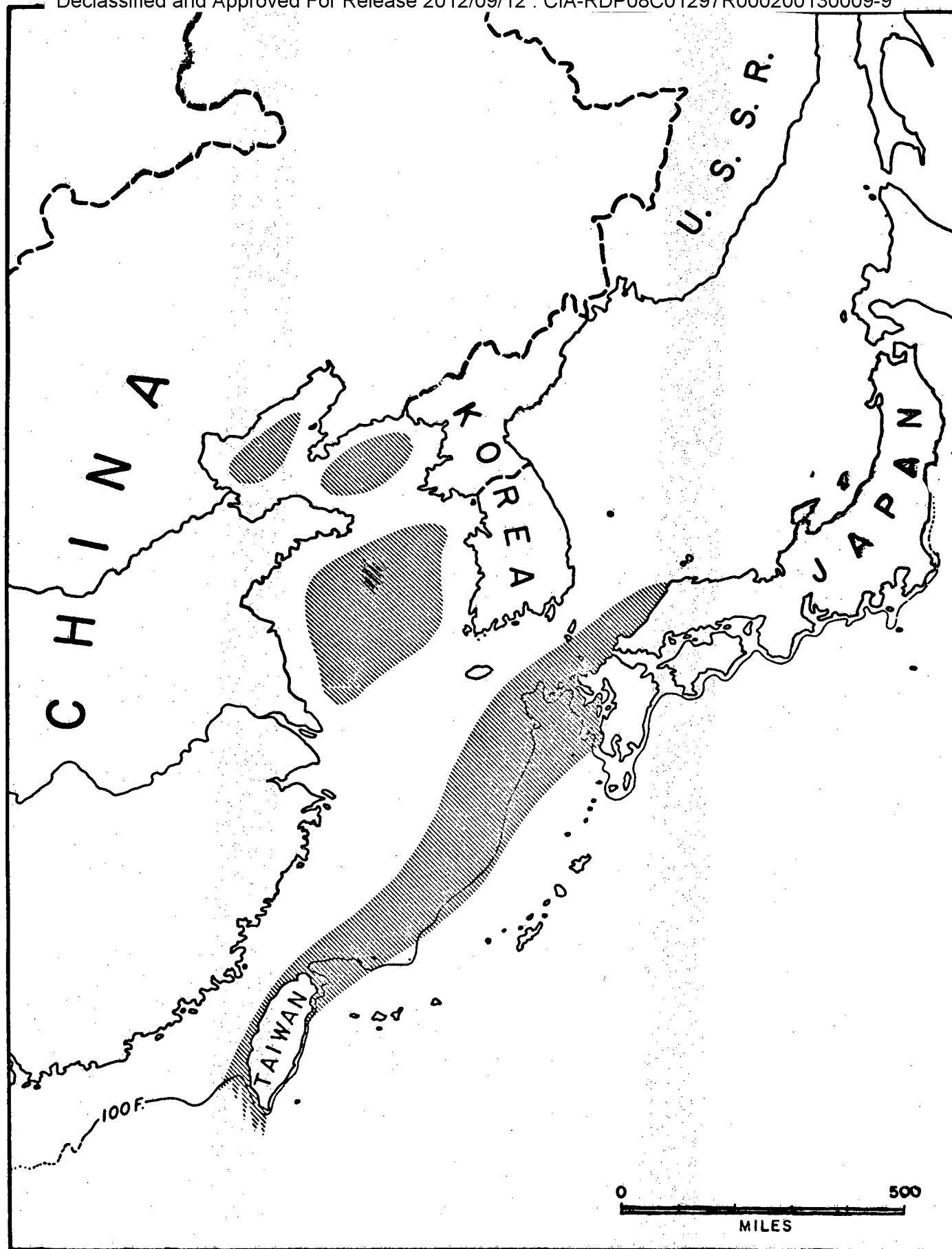
Faithfully yours, Grace Yi Hsu

96. In this connection, a passage (p. 5) from a paper prepared (April 3, 1971) by the Concerned Chinese Association at Indiana University may be noted with interest.

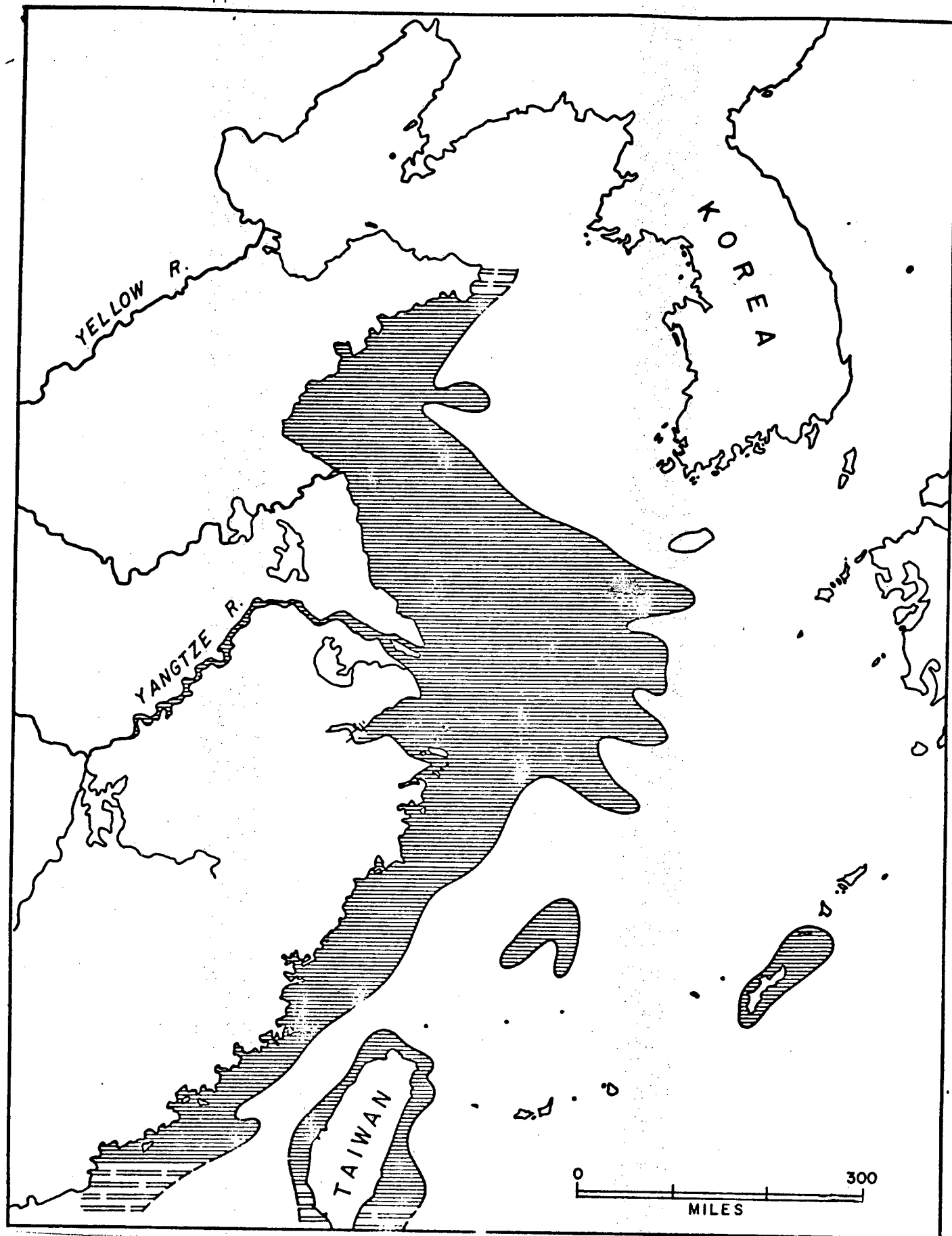
Historical, geographical and actual circumstances should be taken into consideration in determining the question of the sovereignty of the Tiao Yu Tai Islands. We are not denying the validity of the Western concept of the Rule of the Law, for we believe that this concept was built on the basis of justice. But we must condemn the practice of using that concept to justify territorial aggrandizement at the expense of the sovereign rights of other nations. (emphasis added)

97. This is a group of barren rocks in the Sea of Japan, also has a Korean name, Tokdo, and a Japanese name, Takeshima, and is virtually useless except for purposes of territorial dispute. Korea has been in effective control of it and regards the issue as settled for good, whereas Japan thinks somewhat otherwise. The controversy started on January 18, 1952 when Korea made a declaration of sovereignty over her adjacent waters and included the rocks inside the so-called Peace Line (intended to imply peace with Japan).

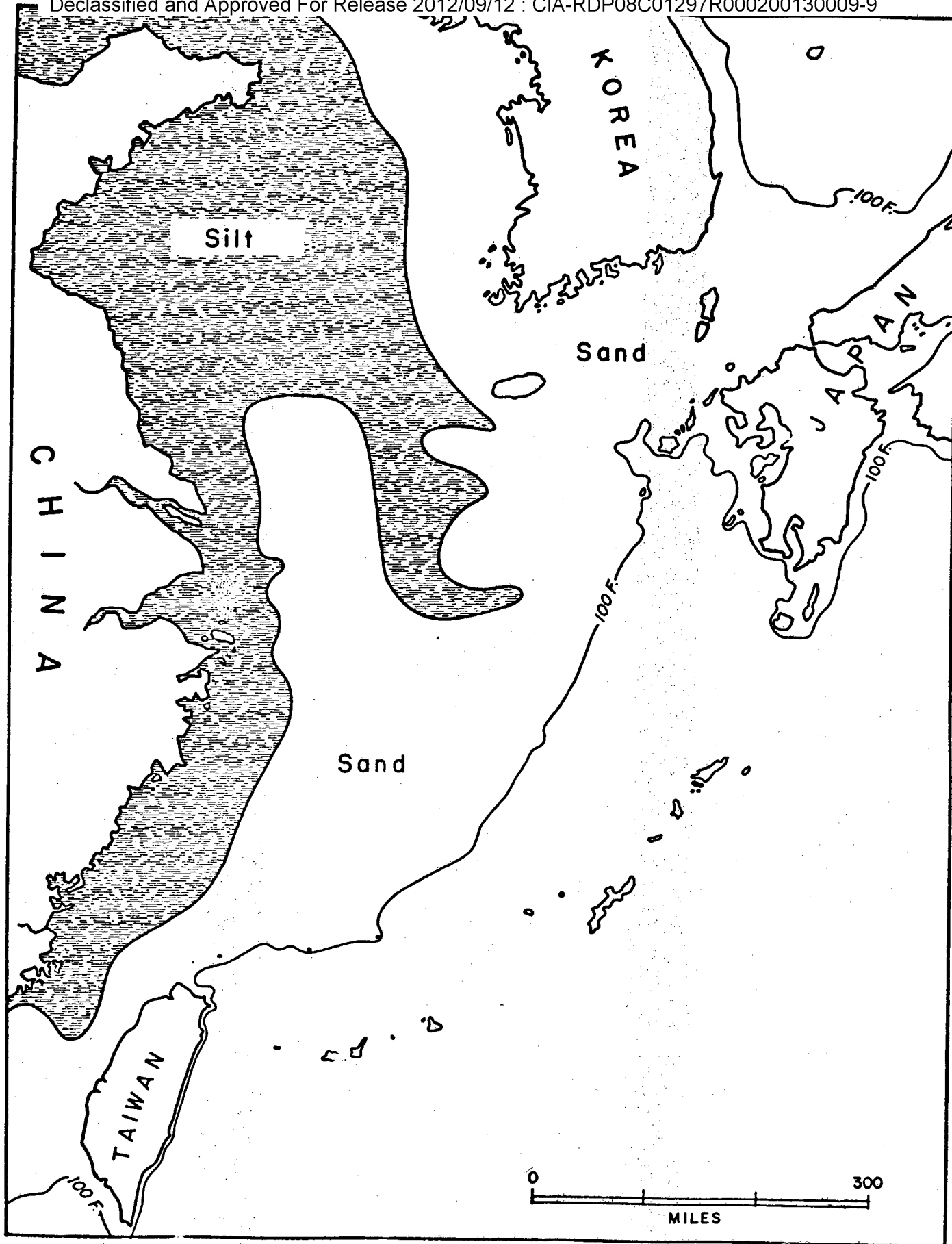




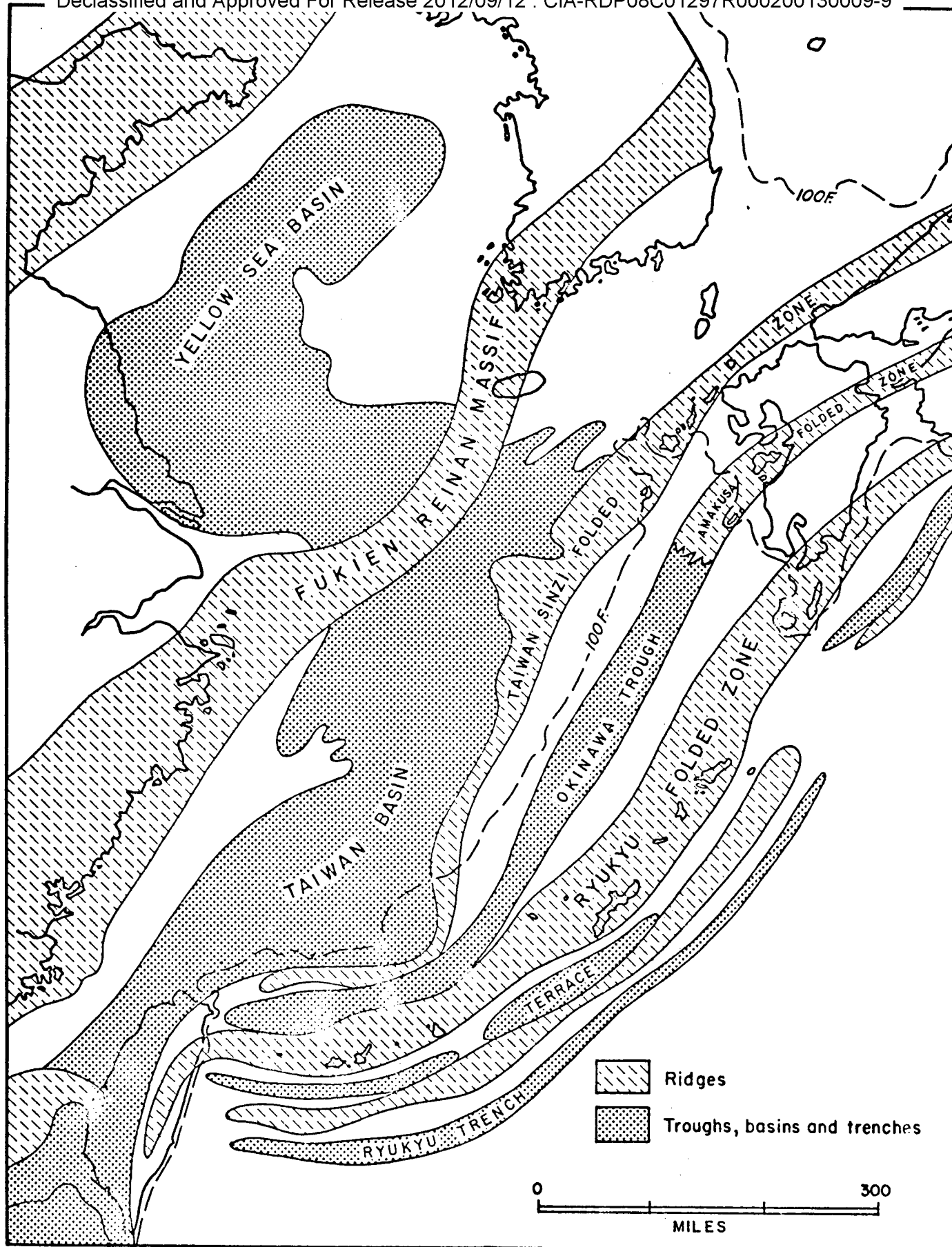
No. 1: Prospective oil and gas fields beneath the Korea Strait, the Yellow Sea, and the East China Sea (based on ECAFE Technical Bulletin, p. 17, Vol. 1, 1967)



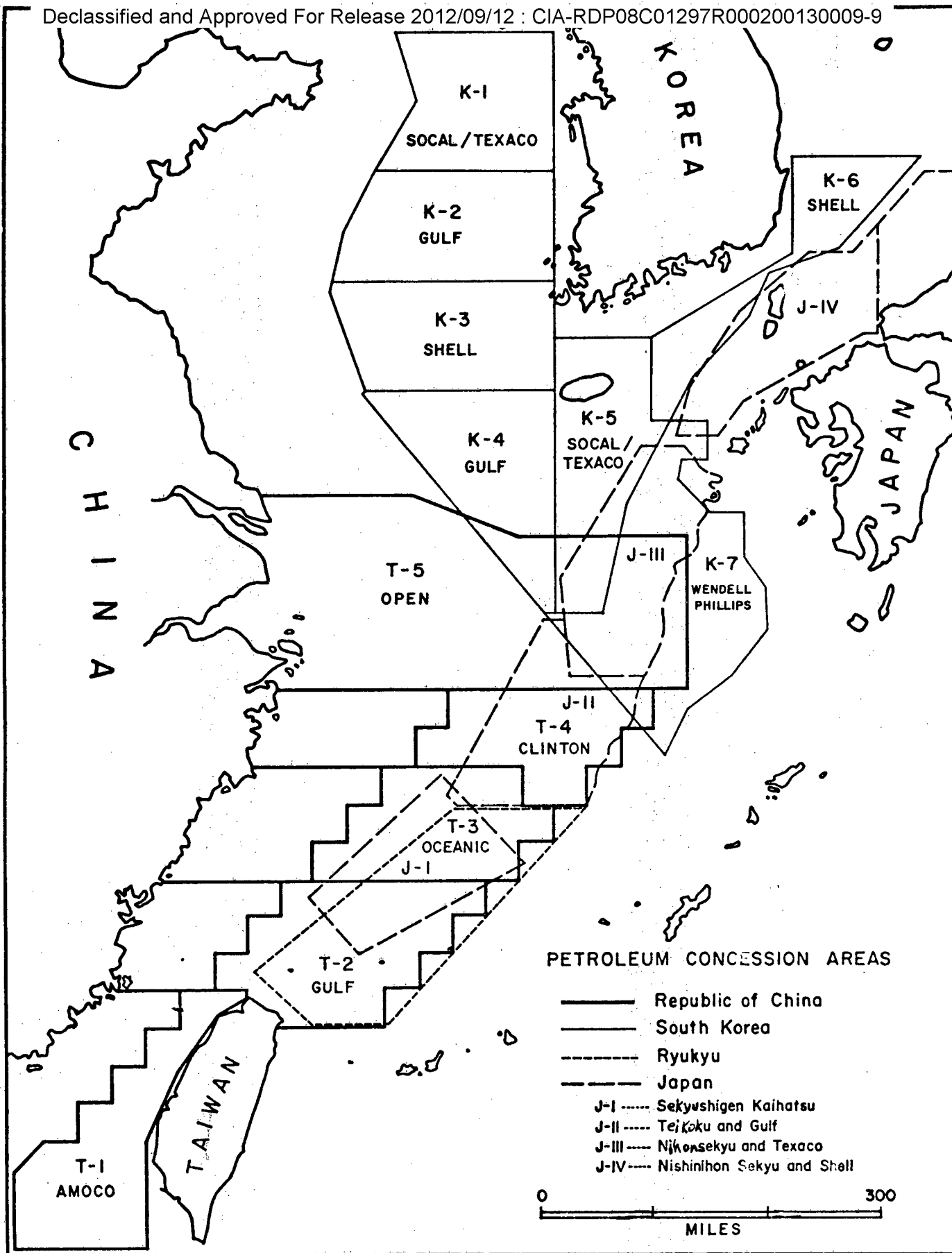
No. 2: Surface water color - yellow (based on ECAFE Technical Bulletin, p. 19, Vol. 2, 1969)



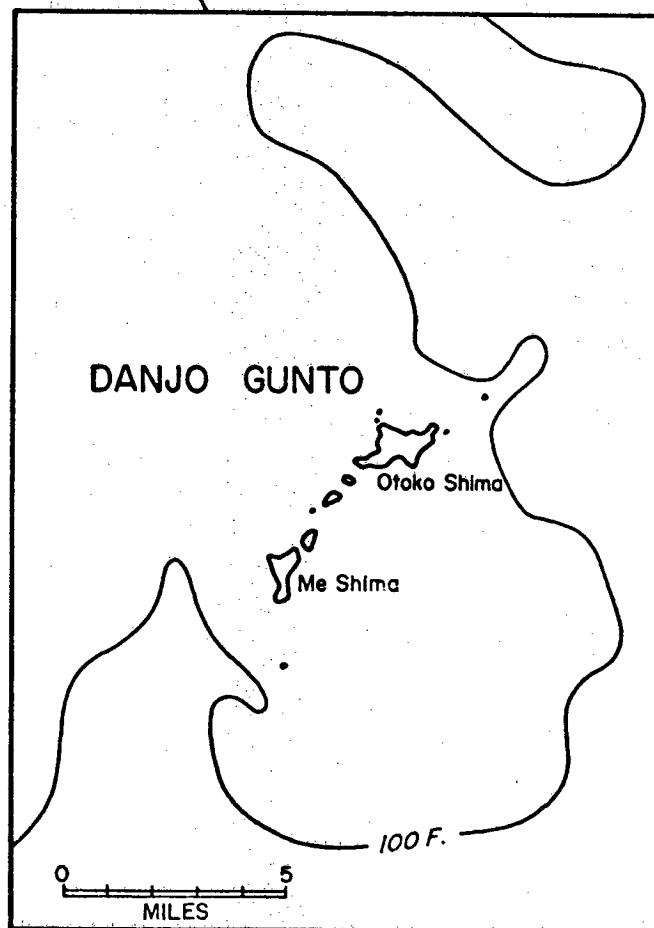
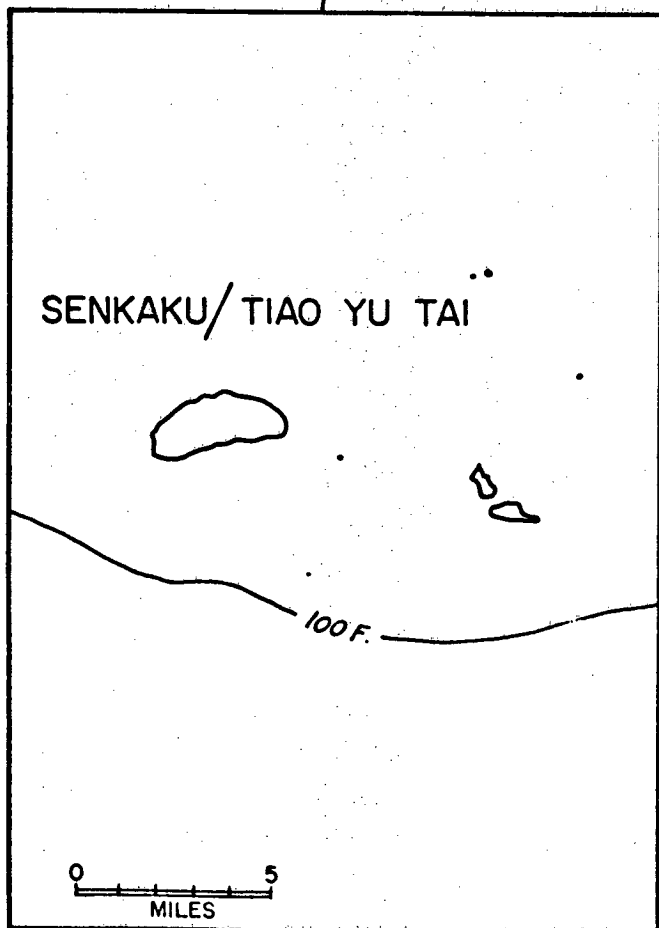
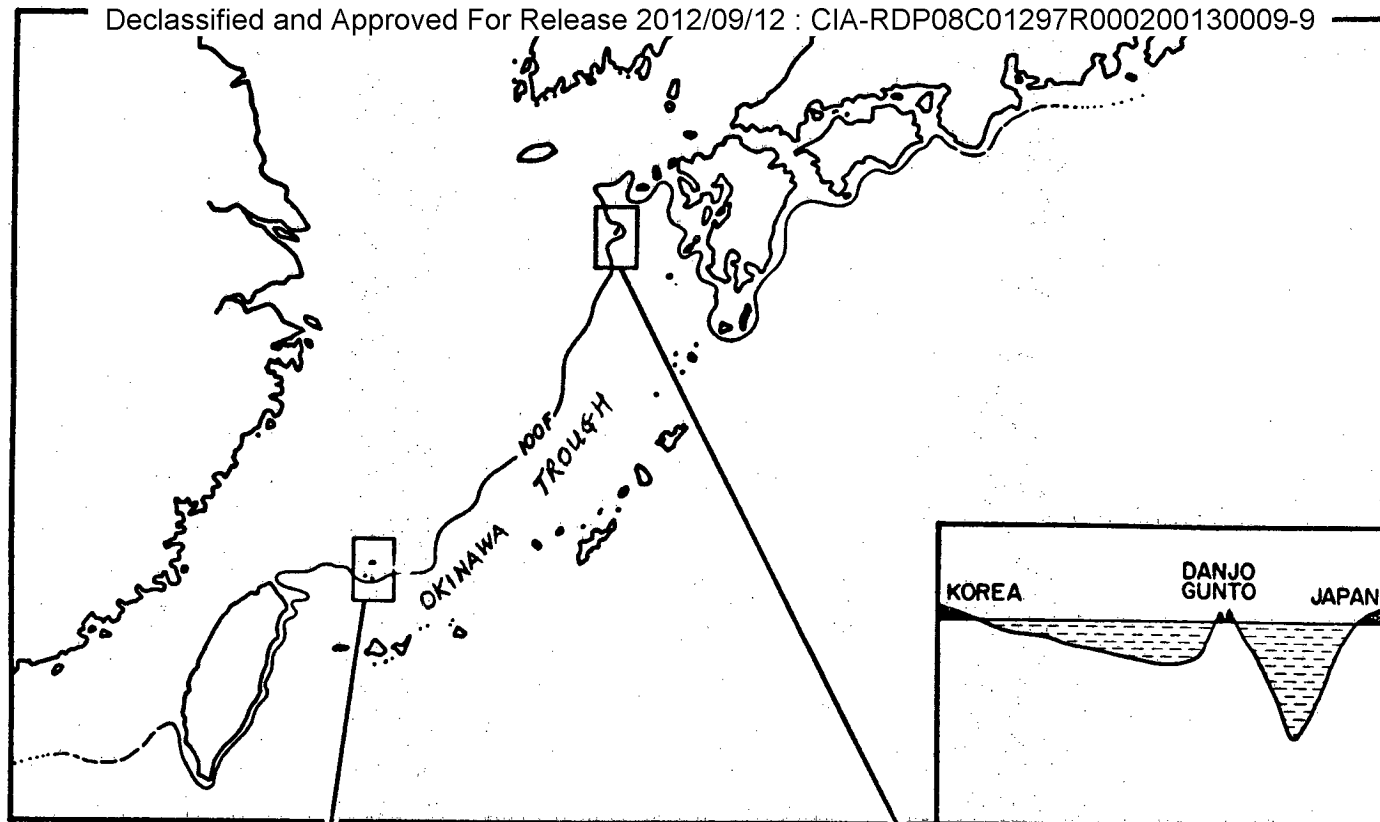
No. 3: General pattern of unconsolidated sediments (based on ECAFE Technical Bulletin, p. 19, Vol. 2, 1969)



No. 4: General pattern of ridges, troughs, basins and trenches (based on ECAFE Technical Bulletin, p. 40, Vol. 2, 1969)



No. 5: Unilateral claims to jurisdiction



No. 6-a: The Danjo Gunto and the Tiao Yu Tai - Senkaku Islands (for further detail, see maps no. 6-b and 6-c)

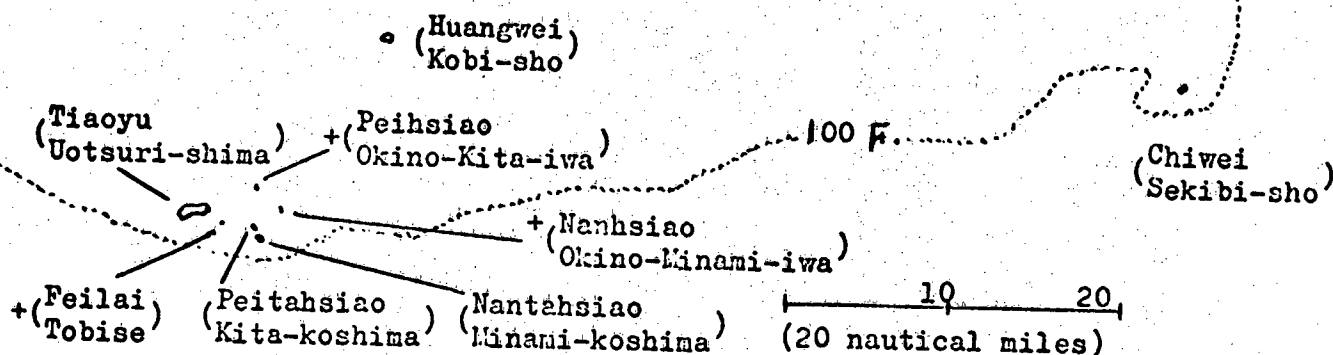
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TIAO YU TAI -- SENKAKU ISLANDS

(Chinese name)  
(Japanese name)

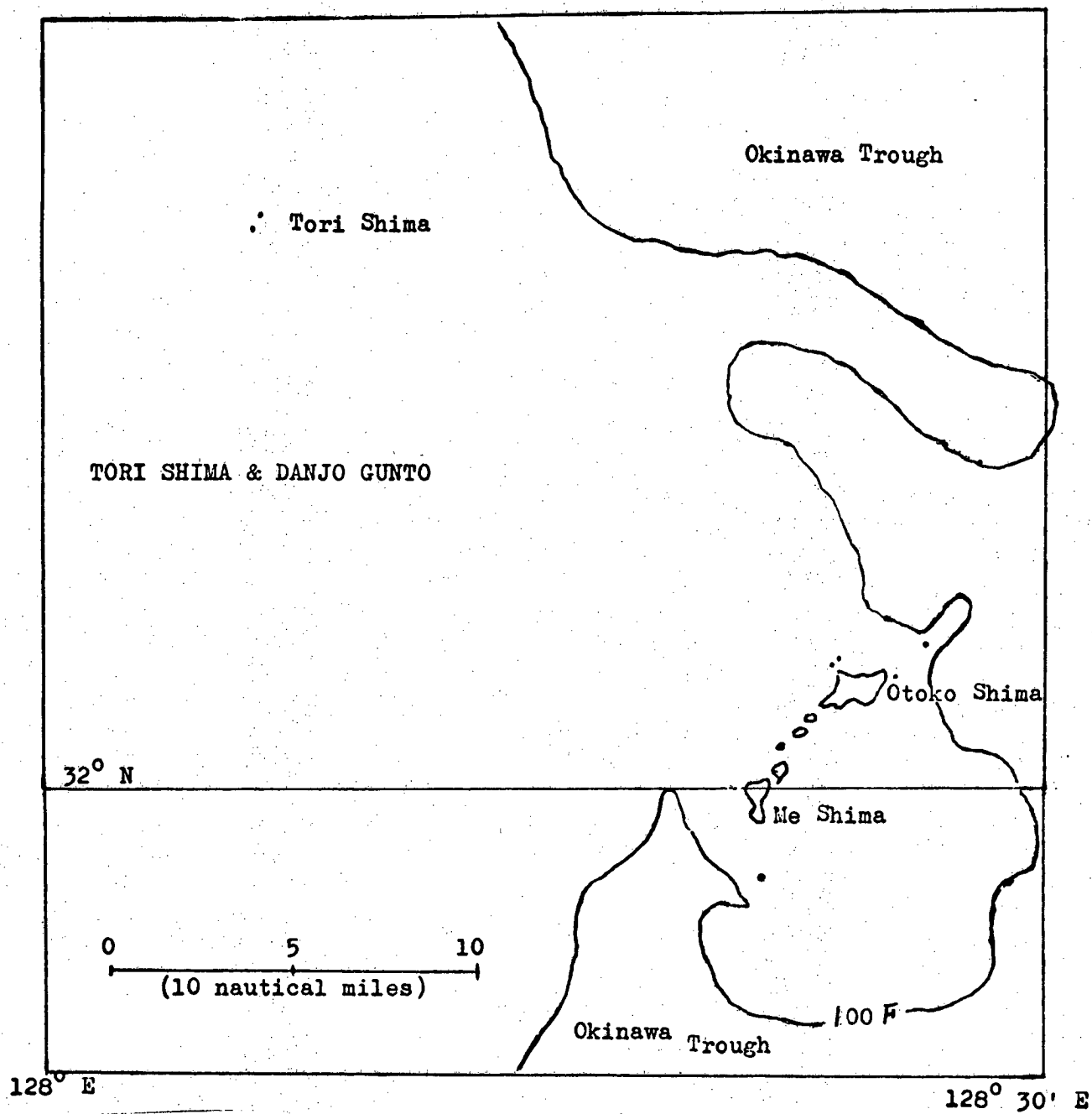
No vegetation on:

- + Feilai
- + Peihhsiao
- + Nanhhsiao



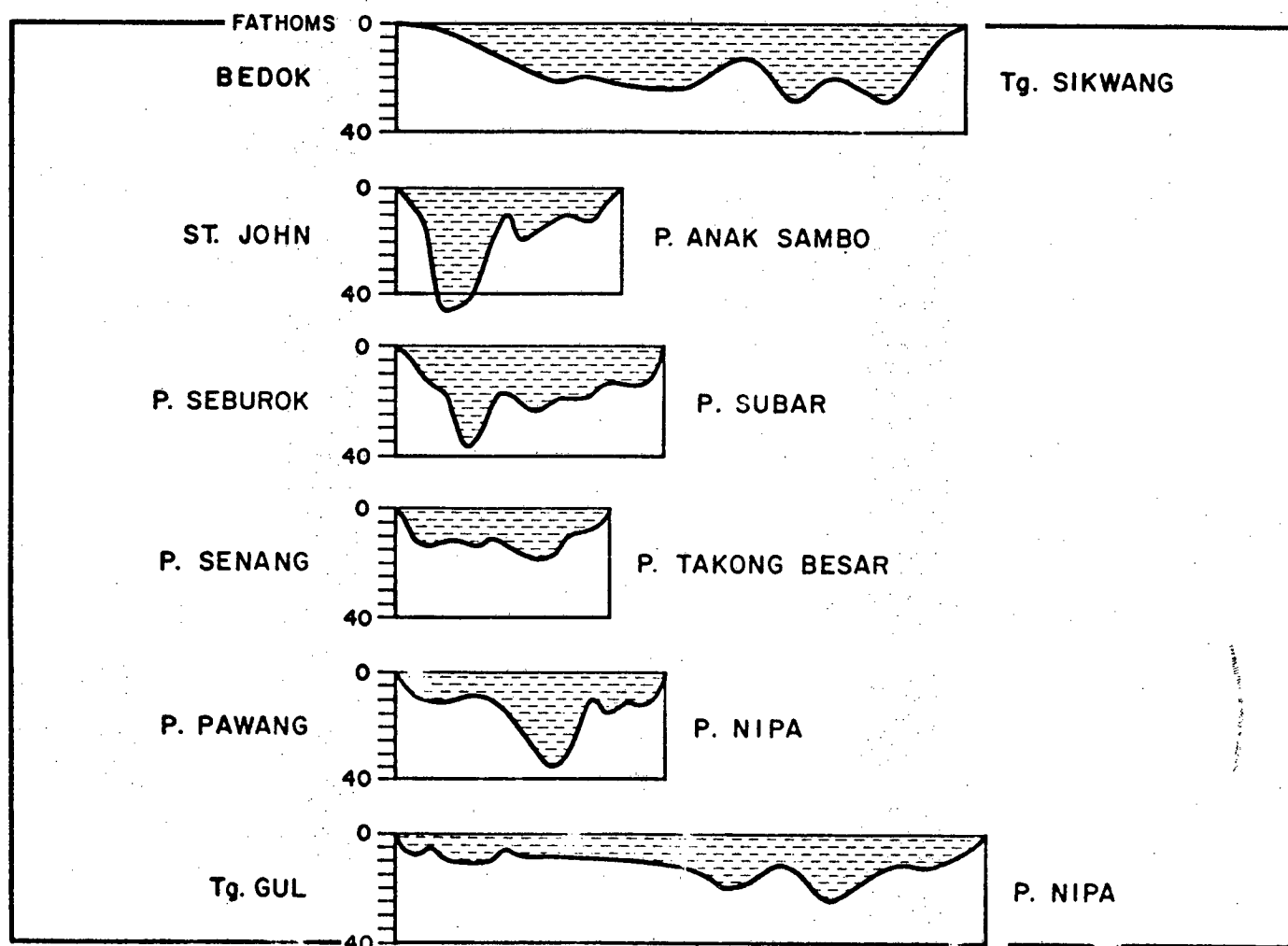
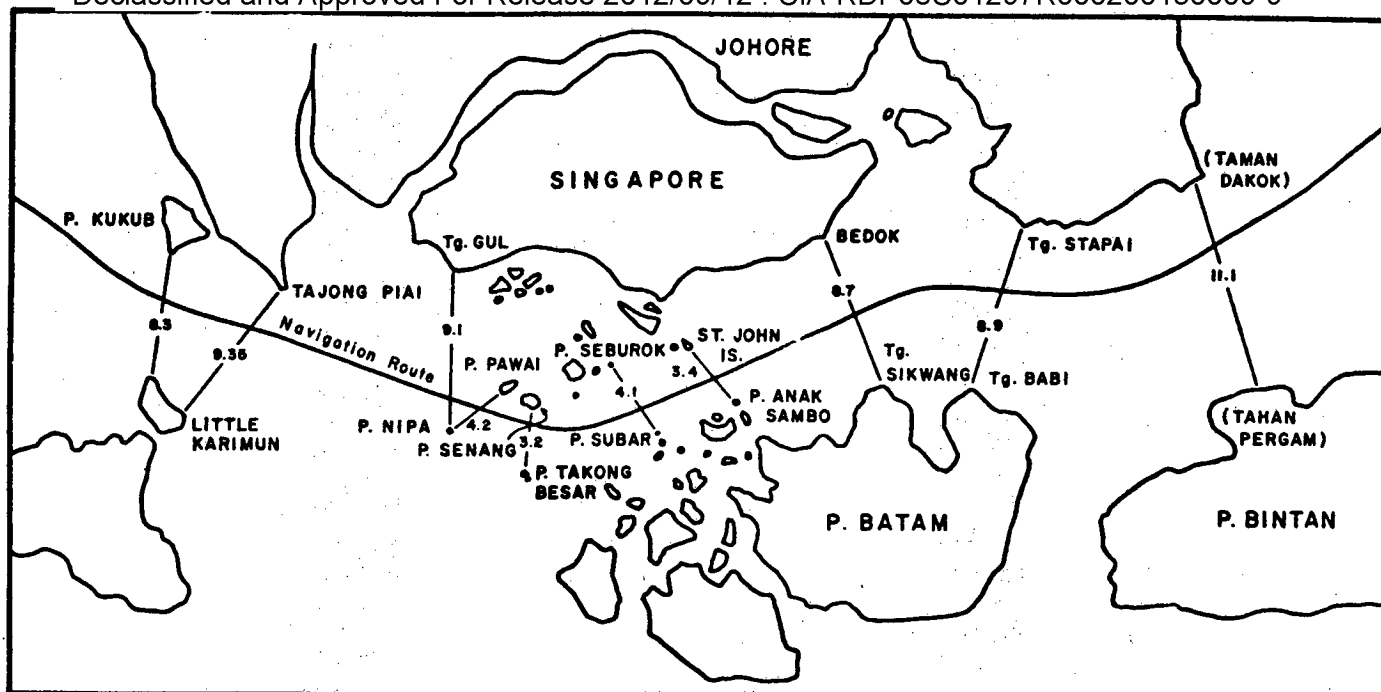
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No. 6-b: The Tiao Yu Tai - Senkaku Islands

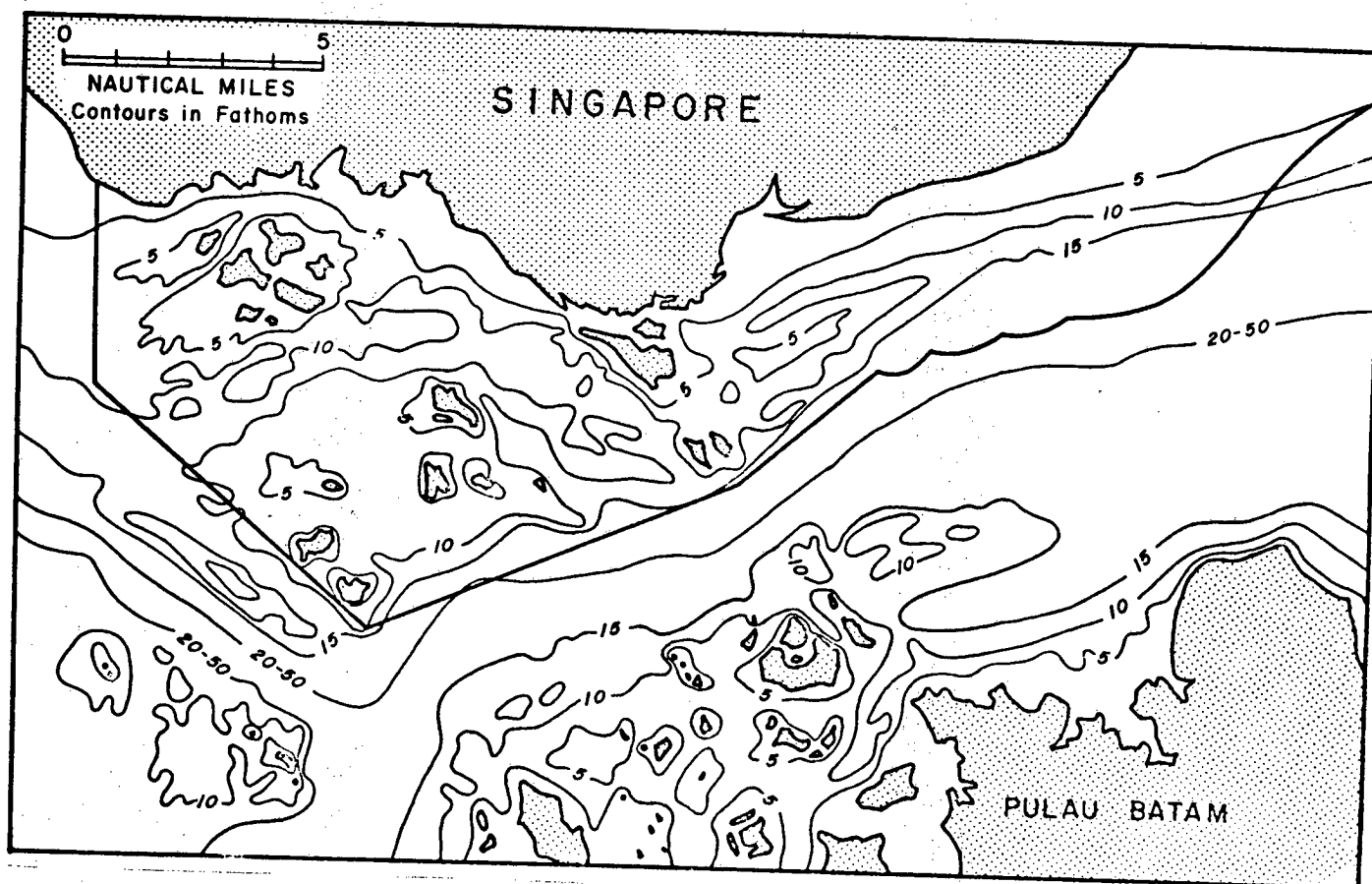
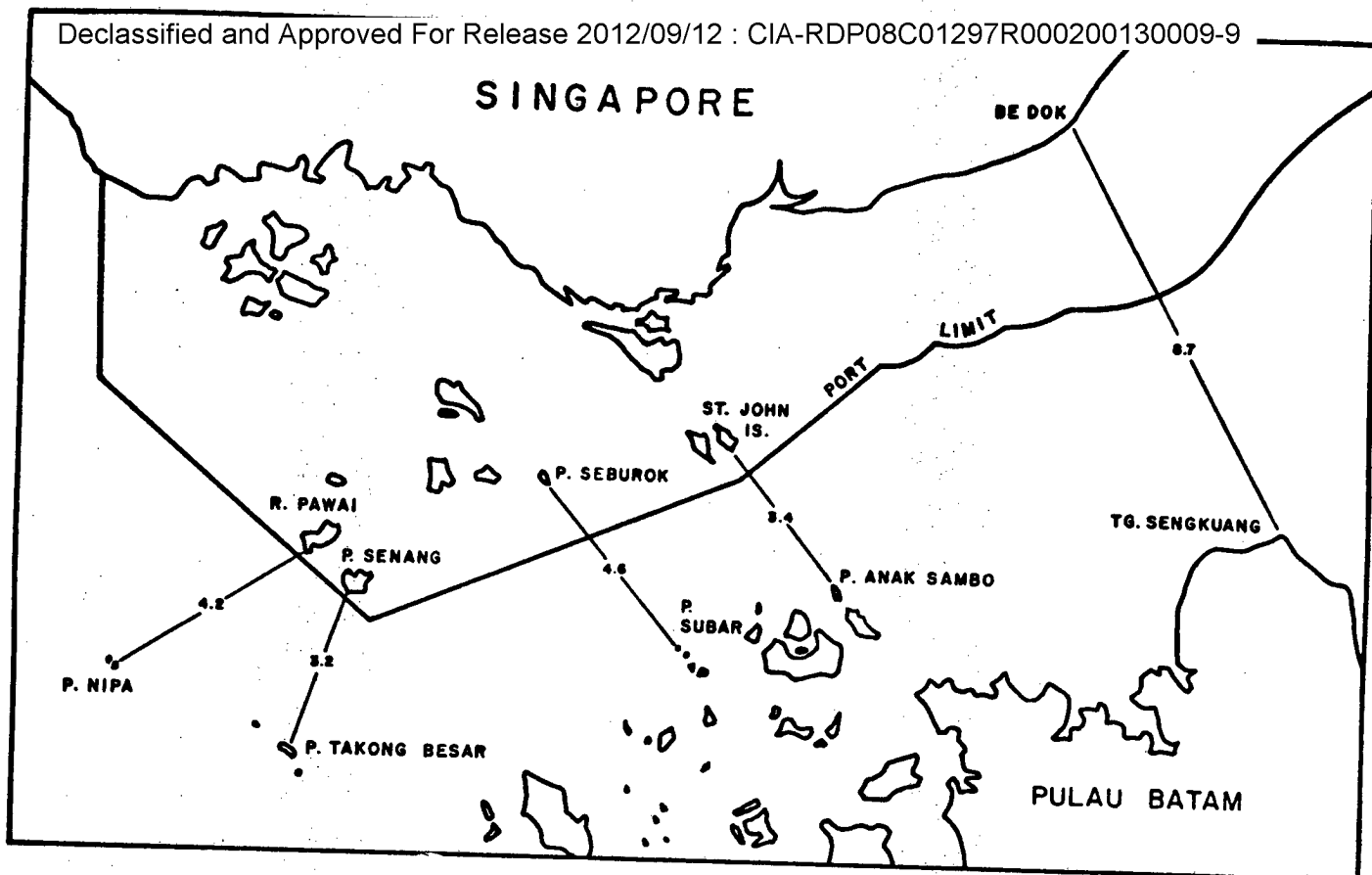


No. 6-c: The Danjo Gunto

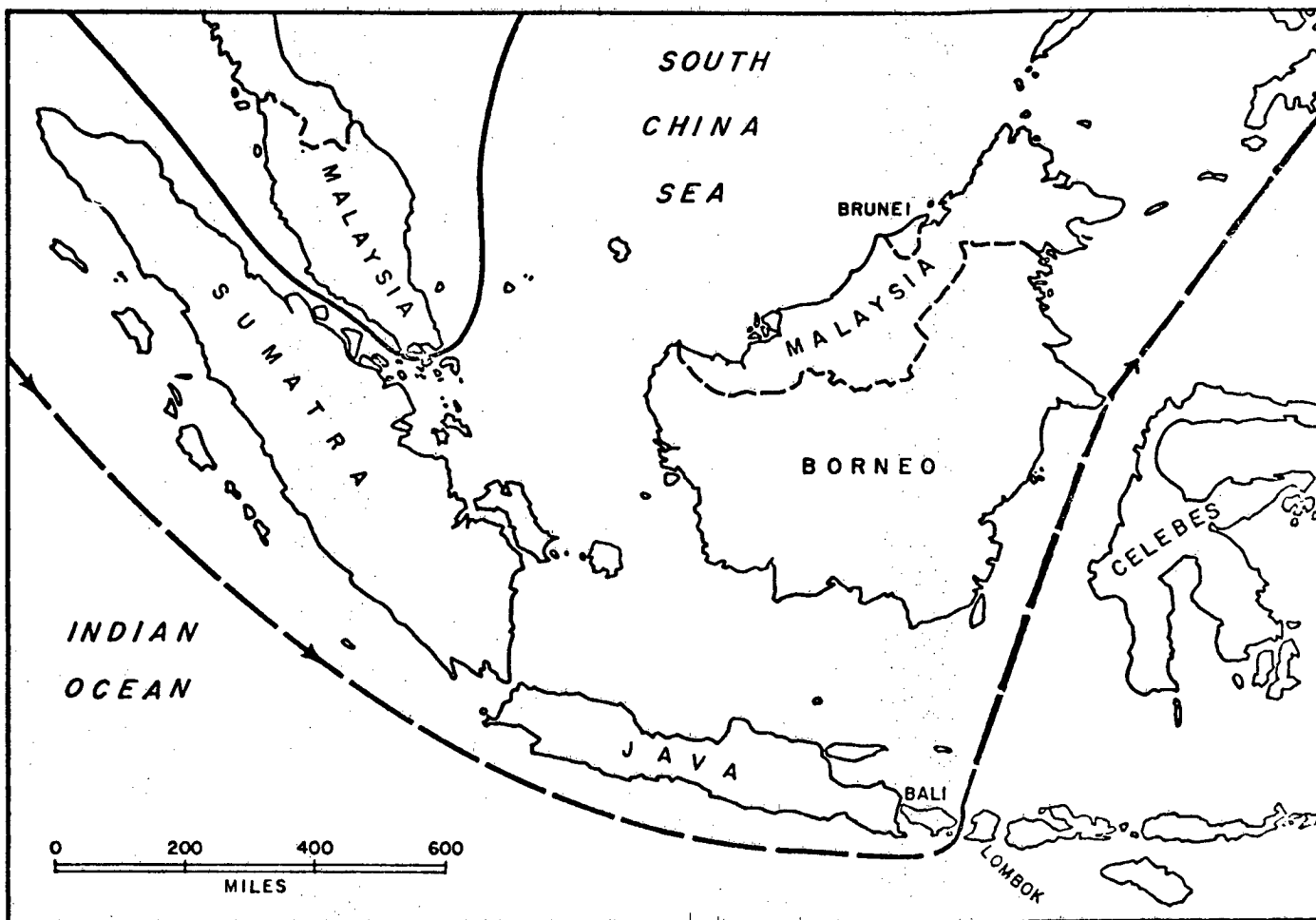
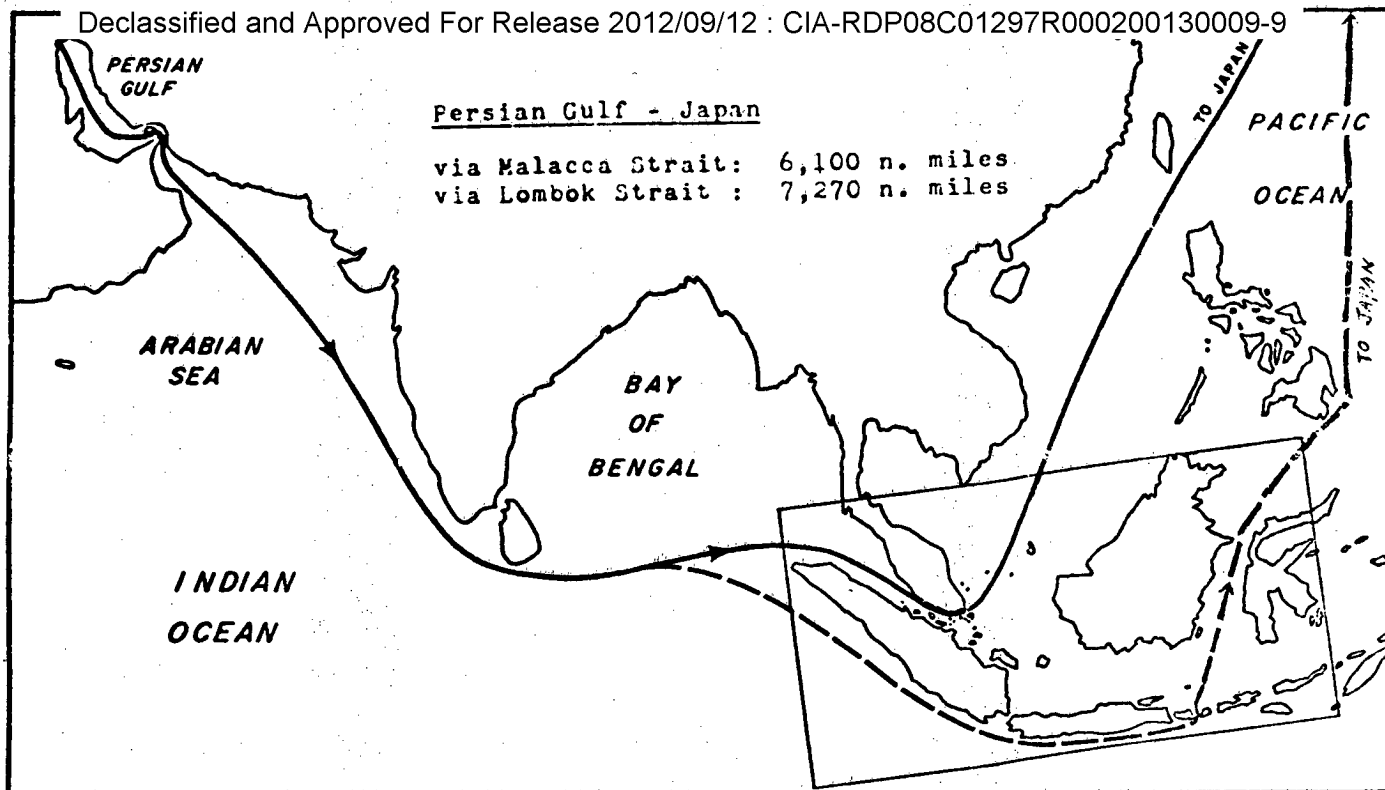




No. 7: The Singapore Strait (based on K. E. Shaw, Nanyang University, Singapore - cf. footnote 21-1)



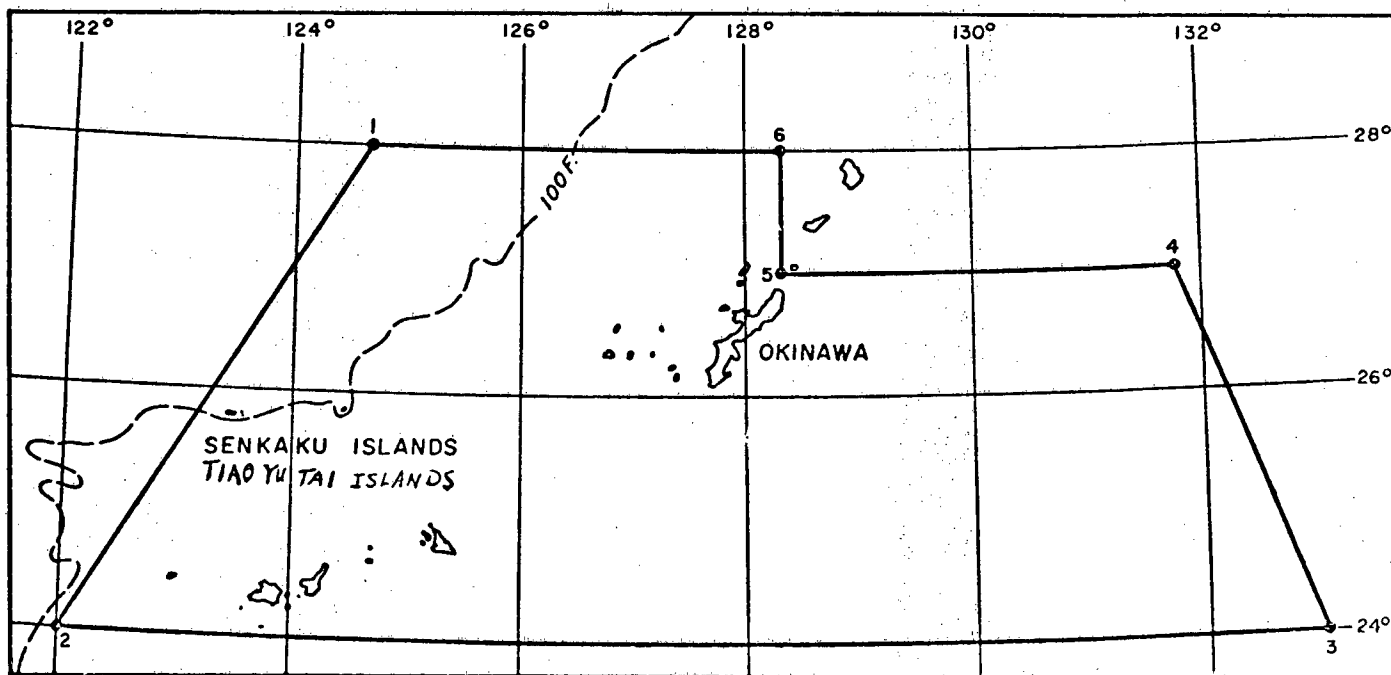
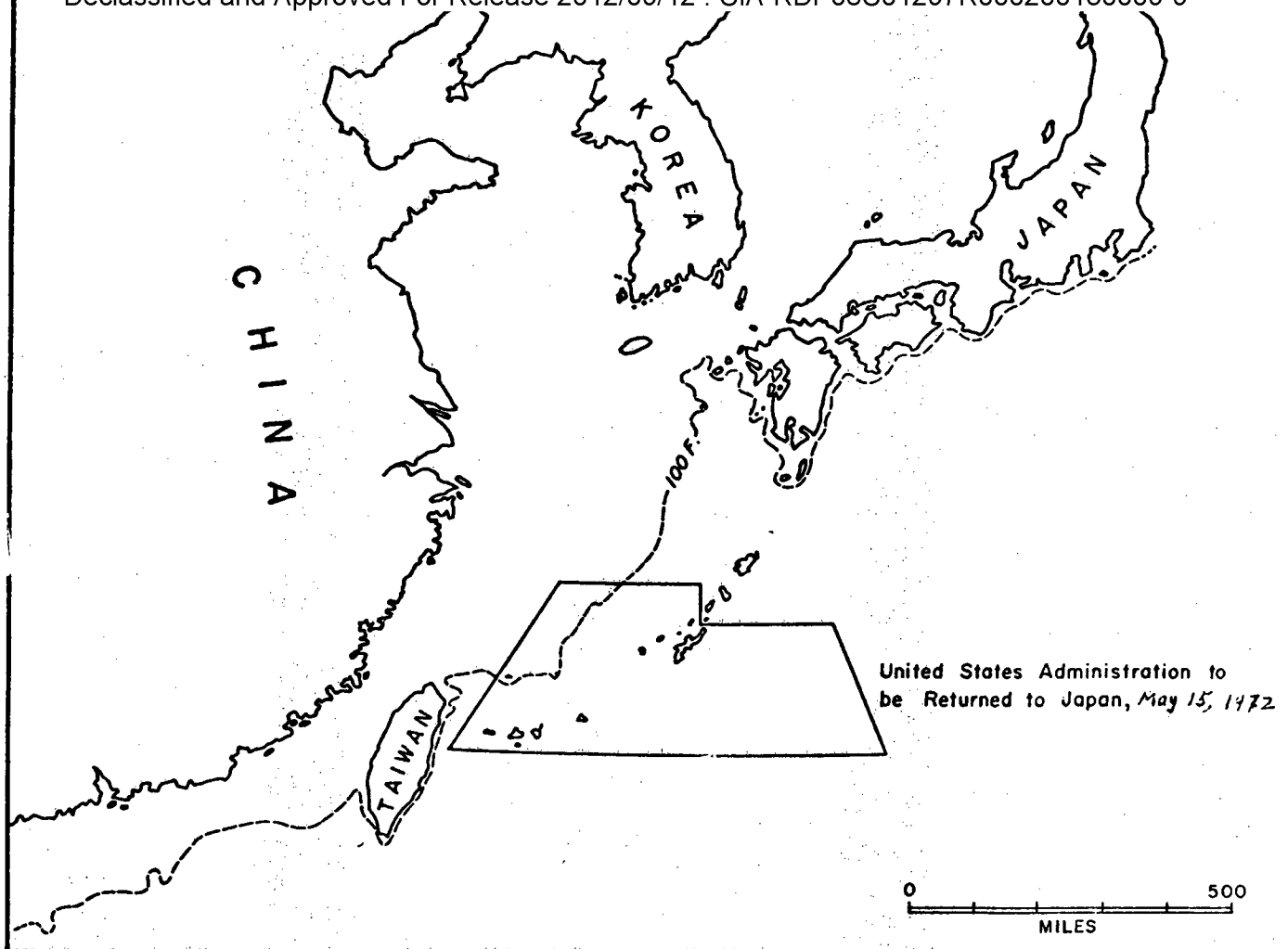
No. 8: The Singapore Strait (based on K. E. Shaw, Nanyang University, Singapore - cf. footnote 21-2)



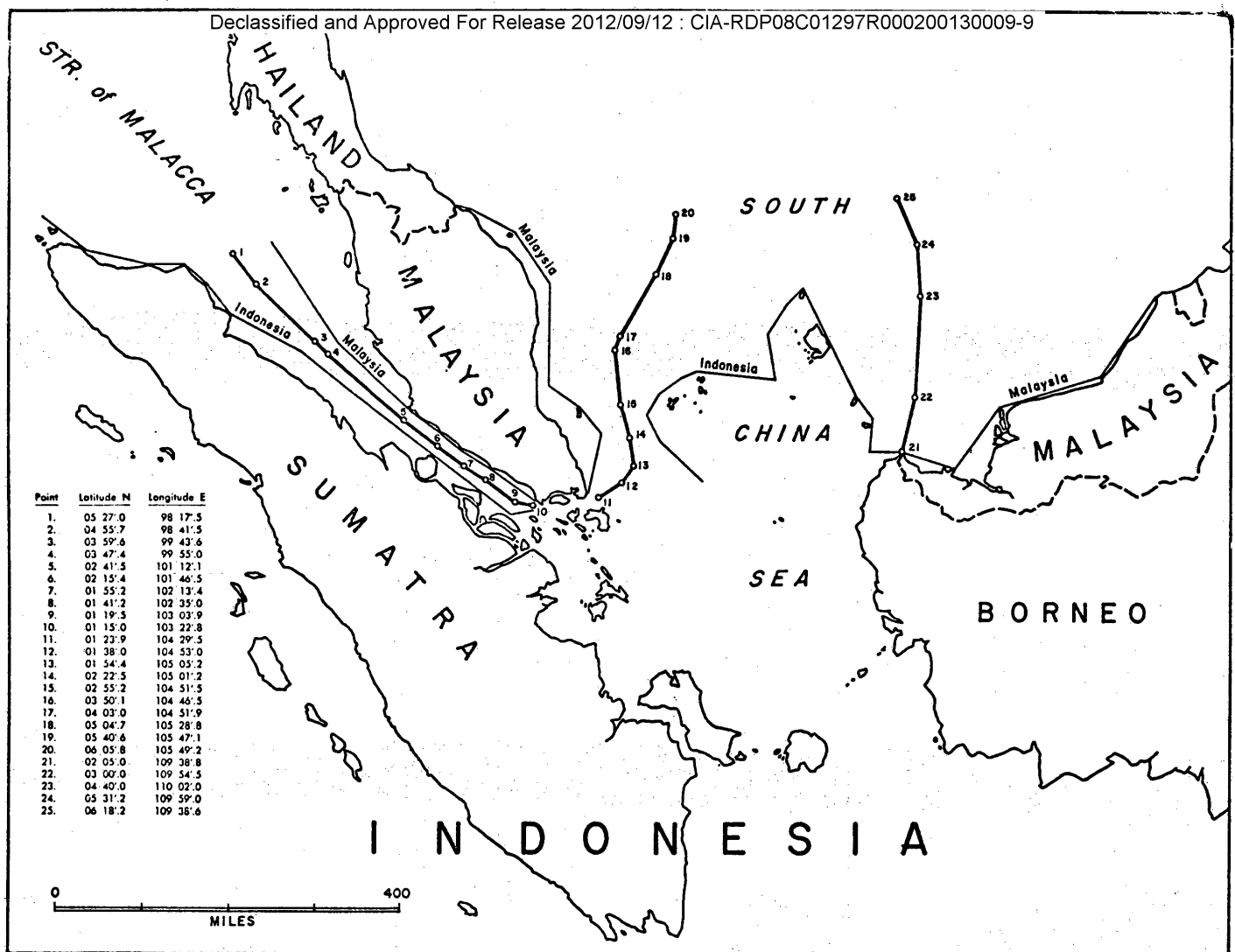
No. 9: Navigation routes via the Malacca Strait and the Lombok Strait



No. 10: The contours in fathom (based on ECAFE technical Bulletin, p. 15, Vol. 2, 1969)



No. 11: Okinawa (to be reverted to Japan on May 15, 1972)



No. 12: The continental shelf boundaries between Indonesia and Malaysia (based on International Boundaries Study, U.S. State Dept. - cf. footnote 28)

